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THE DECLARATION OF LONDON

WITH AN
INTRODUCTION AND NOTES
AND APPENDICES

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TO
JOHN WESTLAKE, ESQ., K.C., LL.D., D.C.L.

THE DOYEN OF ENGLISH INTERNATIONAL LAWYERS

IN SINCERE RESPECT

FROM

A GRATEFUL PUPIL



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PREFACE.

“THE Declaration of London” has become a burning question for the general public, which usually leaves discussions of International Law to professors and academical persons. As, however, the Declaration, on the one hand, is a very complex document, not easily intelligible by the layman, and, on the other hand, the general notions as to the present state of the laws and usages of maritime war are very vague, there has been not a little misunderstanding of the purport and effect of the international agreement. In this edition of the Declaration I have endeavoured to explain its contents as a whole and in detail, and to correct some erroneous opinions about the changes which it would introduce into our Prize Law. I have based my commentary partly upon the material in the Blue-Book containing the Correspondence and Documents respecting the London Naval Conference, which drew up the Declaration (Misc. No. 4, 1909); and I have also made use of legal articles on the Declaration in *The Law Quarterly Review*, *The Journal of Comparative Legislation*, *The American Journal of International Law*, and *The Law Magazine and Review*, by the Rt. Hon. Arthur Cohen, K.C., Professor Oppenheim, Sir John Macdonell, Mr. Denys Myers, and Dr. Baty. Of the many criticisms published during the last two months in the press, the three letters of Dr. Westlake, which appeared in *The Times* while my book was in proof, seemed to me to contain the most weighty and the best considered appreciation of the Declaration, and I could not forbear from adopting some of the points there made.

I am under obligations of a different kind to Mr. Gibson Bowles' book on “Sea-Law and Sea-Power,” a considerable part

of which deals with the Declaration of London and the International Prize Court Convention. It has provided me with arguments to controvert rather than with material to embody. Mr. Bowles is the Rupert of the battle which is being fought about the Declaration; and in his fierce charges against any supposed derogation of our old belligerent rights at sea, and his headlong opposition to any kind of international agreement, he is often carried in a cloud of rhetoric far away from the true facts of that Prize Law of which he claims to be the champion. With the criticism of the Declaration advanced by another class of writers who regard it as "an instrument of national destruction," and declare that "its provisions are absolutely certain to produce universal starvation in this country in the event of a war with Germany," I have not thought it necessary to deal in detail. These writers suffer from a kind of national neurasthenia, and can never be happy unless they are themselves in a panic, and are doing their best to bring their countrymen into the same condition. But their notions of International Law are as strange as their complete distrust of the ability of the English fleet to protect our commerce; and their appalling prophecies of the effects of ratifying the Declaration are not more striking than their ingenuous faith that, if there were no Declaration, our enemy would adopt, or the neutral powers would compel him to adopt, just those provisions of our Prize Laws which would suit our interests.

At the same time I recognise the force of the criticisms made by the great commercial bodies of this country, to which certain features of the Declaration have given rise, more especially the articles dealing with Conditional Contraband and the Sinking of Neutral Prizes, and the omission of an article to settle the question of Conversion of Merchantmen into Warships. I have dealt briefly in the Introduction and more fully in the Commentary with these objections, and I have tried to elucidate how the Declaration as a whole affects our position for the better.

In conclusion, I have to thank the editor of the *Fortnightly Review* for permission to reproduce part of an article on the Declaration which I wrote for that Review; Dr. Ernest Schuster, who has discussed the Declaration with me many a day, and who,

out of his wide knowledge and experience has given me a number of valuable suggestions ; and my father, Mr. Herbert Bentwich, and a friend, who would be nameless, for reading the proof sheets and improving them.

NORMAN BENTWICH.

LINCOLN'S INN,

February, 1911.

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THE DECLARATION OF LONDON.

PART I.

INTRODUCTION.

THE Declaration of London, which was drawn up by the Naval Conference of London, held in 1909, is, as it states in its preamble, intimately bound up with the Convention for the Establishment of an International Prize Court, which was drawn up by the Hague Peace Conference of 1907. We must, therefore, go back to the results of the Hague Conference in order to understand the aim and effect of the international agreement which was come to in London.

The first Hague Peace Conference in 1899 had drawn up a comprehensive "International Convention with respect to the Laws and Customs of War on Land," which was designed to check the severity of military belligerents, and was ratified by all the great Powers. Among the chief subjects on the programme of the second Conference, in 1907, was the preparation of a corresponding code of the laws and customs of war upon the sea. But in the multitude of counsellors there is often confusion as well as wisdom : and the assembly of representatives of all the nations was unable to attain agreement upon the most important and most controversial questions in the law of maritime warfare. It is true that several fine-sounding conventions were drawn up touching "The conversion of merchantmen into warships," "The rights and duties of neutral Powers in naval warfare," "Restrictions on the exercise of the rights of capture" ; but they were more remarkable for what they omitted than for what they settled, and in many cases where they professed to establish a

The Hague
Conference of
1907.

rule, its value was whittled away by its vague statement. Moreover, upon the vexed questions of Contraband and Blockade, after much discussion, the delegates failed to attain any definite result. But while it failed to draw up a Code of International Maritime Law, the Hague Conference succeeded in formulating a project for an International Court for the revision of national prize decisions.

Defects of
National
Prize Courts.

For long it had been a cause of complaint that prize-law, which was in theory international, was in practice national, subject not only in its substance to differences of national usage, but in its administration to the prejudices and partialities, and not seldom to the aberrations of national judges. Lord Stowell, in a famous judgment, pronounced during the Napoleonic Wars (*The Maria*, No. 2), declared that "the seat of judicial authority is locally here in the belligerent country, but the law itself has no locality. It is the duty of a judge sitting in an Admiralty Court, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent States, some happening to be neutral and some belligerent." His words, however, represented rather an aspiration than a statement of facts; and not only at that period, but in all subsequent wars, the prize laws of the Great Powers have varied in principle as well as in detail. Thus in that very case of *The Maria*, where he uttered these fine sentiments, Lord Stowell was enforcing the English doctrine which held that neutral merchantmen, sailing under the convoy of warships of their own country, were liable to belligerent search; which doctrine was steadfastly upheld by our Prize Courts and as steadfastly opposed by foreign nations. To take another example, the theory and rules of Blockade adopted by England and America were widely different from those held on the Continent. Our view was that a breach of Blockade was committed by an attempt to reach the blockaded coast after general notice of the blockade; while they held that there must be an attempt to cross the line of blockading warships after special notification to the offending vessel. The English Courts again regularly held that the enemy character of a ship or a cargo was to be determined not by the nationality of the owner, but by his actual residence during the period of the war; while the Continental Courts held that

the character depended on nationality. Hence there was not any single law of nations binding upon Prize Courts, but a number of different practices, each claiming to be the true doctrine, and each administered by national courts.

The first attempt to establish by Convention a definite international law of maritime capture was made in 1856, at the conclusion of the Crimean War, by the plenipotentiaries who had signed the Treaty of Peace at Paris.* Premising that there were regrettable differences between nations as to their rights on the sea in time of war, and that the uncertainty as to their liabilities and duties caused serious trouble between belligerents and neutrals, the Declaration of Paris laid down four rules, which, though originally binding only upon the Signatory Powers, have since obtained the consent of the civilized world, and must now be regarded as part of the Common Law of Nations :

The Declara-
tion of Paris.

- (1) Privateering is and remains abolished.
- (2) The neutral flag protects from capture enemy goods, with the exception of contraband of war.
- (3) Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.
- (4) Blockades to be binding must be effective, that is to say, maintained by a force sufficient to prevent access to the coast of an enemy.

These rules introduced most important modifications of belligerent rights at sea, the exemption of enemy's goods from capture when on neutral bottoms, especially, being a great concession by this country, which had till then claimed to capture enemy property wherever she found it. There are indeed some persons who urge that we should never have made this concession, and that we ought now, in spite of the lapse of time during which neutral trade has been organized on the assumption that the Declaration is law, to take it back. Theoretically it is true we might denounce the Declaration of Paris, and resume our old claim to capture enemy property in neutral bottoms ; but seeing that the Declaration has been acted upon in every naval war for half a century, such an attempt on our part would call down upon us the hostility of every neutral Power, and involve us probably in a war with all the other civilized nations.

* See Appendix C, pp. 169-70.

Incomplete-
ness of its
Rules.

By the Declaration, then, we and the other Powers are bound. But clear though the Paris rules were, as statements of general principle, they were somewhat wanting in definiteness and precision ; and, moreover, they left unsettled a number of disputed points in the practice of nations. What was contraband of war ? What the penalty for carrying it ? What were the conditions for establishing a blockade, and what the penalty for breaking it ? What was the test of enemy goods, and when was the right to fly the neutral flag valid ? On these points and many more, divergent views were still maintained by different countries, with resulting friction between belligerent and neutral Governments in the later wars of the century. Moreover, the effect of the restrictions placed upon belligerents by the Declaration of Paris was to induce them to extend those rights which still remained to them, and to introduce new offensive weapons against neutrals, in which the latter did not readily acquiesce. Thus in the American Civil War, the Federal Courts, extending an old doctrine known as the rule of Continuous Voyage, made the test of contraband not the destination of the vessel carrying it, but the presumed ultimate destination of the cargo, and likewise confiscated for breach of blockade cargoes which were shipped for neutral ports, but which it was alleged were to be transhipped from these to the blockaded coast of the enemy.

More striking and more harassing to neutrals were the innovations of the Russian authorities during the war with Japan. They proclaimed articles as absolute contraband, which in their own manuals of prize law they had before treated as innocent, such as provisions, fuel, and cotton ; they sank indiscriminately neutral prizes before bringing them in for trial ; and they claimed the right to convert vessels in their merchant service into warships on the high seas during the hostilities, and to let these converted merchantmen then prey upon neutral commerce. The destruction of the English vessels, the *St. Kilda*, and the *Knight Commander*, the condemnation of the *Calchas* and the *Allanton*, for carrying what was at worst only conditional contraband, and the seizure of the P. and O. mail-steamer, the *Malacca*, by the converted Russian merchantman, the *Smolensk*, were events which, though they have now almost passed from memory, at the time caused great unrest among

English merchants, and emphasized the unsatisfactory condition of Prize Law and Prize Courts. Protracted diplomatic representations ensued after the war, with the object of obtaining redress from the Russian Government for the injuries illegally inflicted upon British shipping; but the ways of diplomacy are slow without being sure, and very tardy and very inadequate compensation was secured. Hence the British Government was particularly anxious at the Hague Conference of 1907 to secure, on the one hand, the unification of prize law; and, on the other, the foundation of an international tribunal of appeal which might correct the errors of national Prize Courts.

The Conference of 1907 accomplished half its work; the Court was prepared; the law still remained chaotic. By the International Prize Court Convention it was provided, (Article 3) that an appeal may be taken on a question either of law or of fact from the decisions of national Prize Courts of first instance, (1) when they concern the property of a neutral power or person, (2) when they concern enemy goods loaded on board a neutral ship, or an enemy ship captured in the territorial waters of a neutral power, or when it is alleged that the capture was made in breach of a convention in force between the belligerent powers or of a law of the capturing belligerent. The acting Court is to consist of fifteen judges, of whom nine are a quorum; the judges named by each of the eight Great Powers are always called upon to sit, and the other members are drawn from a fixed rota of judges named by the lesser powers. It is a complete misunderstanding of the Convention to suggest, as has been done, that a Court, composed of the representatives of three minor powers, could adjudicate upon our naval rights. By Article 48 the delegation of three judges possesses only certain ministerial functions, such as fixing the day of trial; and for judicial proceedings the full Court must sit. Further, the proper representation of the countries concerned in the appeal is secured by the provision that the belligerent captor and the neutral power which is a party, or a subject of which is a party to the proceedings, are each entitled to appoint a naval officer to sit as assessor to the Court. Lastly, to dispel another misunderstanding, it should be said that the appeal must be heard in a public sitting, and while, like every other tribunal, the Court

The International Prize Court Convention.

considers its judgment in private, and the discussion of the judges among themselves remain secret, the judgment must be delivered in open Court.

But while the sphere and composition of the Court were satisfactorily adjusted, the failure to settle the Code of the Laws of War at sea left its powers dangerously undefined. The Convention thinly disguised the difficulty by providing (Article 7) that the Court, in deciding any question of law, should follow the stipulations of any treaty in force between the capturing belligerent and the power which, or a subject of which, is party to the suit; and in the absence of any such stipulation, that it should apply the rules of International Law; and if no generally recognised rule existed, it should give judgment in accordance with the general principles of justice and equity.

Need of a
law for the
Court to
apply.

The rules of International Law on Maritime Capture were, at the close of the Hague Conference, still for the most part unformed. There was a common understanding about broad principles, but no agreement as to the exact regulations by which those principles were worked out. Professor Holland pointed out at the time that there did not exist "in nubibus a complete system of prize law, which is in some mysterious way accessible to judges and reveals to them the rule applicable to each new case as it arises." Nor could it be left to the judges of the proposed International Court to create the law, in the way that our judges have created a large part of the Common Law. For a tribunal composed of jurists of all countries might give decisions utterly in conflict with the theory and practice of the nation whose rights and duties it was determining. At the close of the Hague Conference, indeed, Sir Edward Fry, the English plenipotentiary, described the Prize Court project as the most remarkable achievement of the Conference: "because it is the first time in the history of the world that there has been organized a Court truly international. International law to-day," he said, "is not much more than a chaos of opinions which are often contradictory, and of decisions of national courts based upon national laws. We hope to see, little by little, formed in the future around this court a system of laws truly international, which will owe its existence only to principles of justice and equity, and which consequently will command not only the admiration of the world, but the

respect and obedience of civilized nations." The Powers, however, were not so enthusiastic in their reception of the project, nor were they willing to entrust the determination of their belligerent or neutral rights to the uncertain and uncontrolled criterion of a benevolent equity reposing in the bosom of foreign judges. They forebore, in consequence, to ratify the project.

At this juncture, when the International Prize Court scheme threatened to become a cast-off child which nobody would adopt, the British Government invited representatives of the seven other Great Powers with Spain and Holland to meet in conference, "in order to arrive at an agreement as to what are the generally recognized practices of International Law within the meaning of the Hague Convention," or, in other words, to do what the Hague meeting had failed to do. The questions submitted by the British Government to the Powers, on which it was desired to reach an agreement, fell under eight heads:—Contraband, Blockade, the doctrine of Continuous Voyage in respect both of Contraband and Blockade, the legality of the destruction of neutral vessels before their condemnation in a Prize Court, the rules as to neutral ships rendering unneutral service, the legality of the conversion of a merchant vessel into a warship on the high seas, the rules as to transfer of merchant vessels from a belligerent to a neutral flag during or in contemplation of hostilities; and, lastly, the question whether the nationality or domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property. The representatives deliberated in London between December, 1908, and February, 1909, under the presidency of the English plenipotentiary, the Earl of Desart; and the result of their labours is a Declaration containing nine chapters and seventy articles drawn up in French and English, and provided also with an official Report, which was drafted by a committee presided over by Monsieur Louis Renault, the French plenipotentiary.

This Report, which was based on the provisional Reports that had been approved by the Naval Conference, purports to give an exact and non-controversial commentary on the Declaration. Having been adopted by the Conference, it becomes, according to Continental notions of jurisprudence (by which new laws are regularly accompanied by an authoritative Report, explaining and limiting their terms), an official commentary, and serves as an

Naval Conference summoned by the English Government.

The Declaration of London and the Report attached to it.

authoritative guide to the different bodies, administrative, military and judicial, which may be called upon to apply it. The Report amplifies and qualifies in many places the articles of the Declaration, and suggests that many details not specified in them are to be implied; and it is therefore to be regretted that it is nowhere expressly incorporated into the Declaration. Questions have been raised here as to the authoritative character of the Report, and the absence of any express embodiment has given occasion to several English critics to misunderstand a number of the articles of the Declaration by ignoring it. In England we are not accustomed to interpret law-making documents with the aid of any commentaries, unless there is a definite reference to a particular instrument which is explicitly incorporated. But Continental practice is otherwise, and many of the objections raised against the Declaration, which are directly met by the amplifications and explanations in the Report, may be discounted. There can be then little doubt that directions, issued by the Signatory Powers to naval commanders as to their duties, would have regard to this Report; and that not only the national Prize Courts, which would have to apply the Declaration in the first place, but also the International Prize Court, which would finally adjudicate upon the belligerent rights against neutrals, would follow the commentary as well as the text of the articles.*

Scope of the
Declaration.

As the prestige and the power of the nations represented at the Conference far outweighs that of the rest of the world, it is well-nigh certain that the Code, if ratified by the Governments concerned, would be accepted as the general prize law, and would be applied by the Hague Prize Court to all the cases which came before it for review. It is therefore eminently necessary that its provisions should be scrutinized with great care, it being always remembered that the alternative to the adoption of this international agreement is the continuation of the present chaotic system, which exposes the neutral trader in war time to the more or less arbitrary rulings of the belligerent's naval advisers, enforced by the more or less arbitrary sentences of the belligerent's naval judges.

Upon all but two points of the programme the plenipotentiaries of the Powers thought that they had successfully

* If, as Professor Holland has suggested, the Report will not be binding on the Signatory Powers unless their Governments expressly adopt it in notifying the Declaration, Great Britain might expressly include it in her notification.

accomplished their aim ; but recently in this country their work has been subjected to fierce criticism, and several of the most important Chambers of Commerce and shipping bodies in the great mercantile centres have passed resolutions opposing its ratification. England, as the country possessing at once the greatest naval and the greatest mercantile marine in the world, has the most to gain and the most to lose both as neutral and as belligerent by any international convention on the maritime laws of war. Moreover, our geographical and economical position is altogether different from that of Continental countries. We have ports and colonies in all parts of the world, while we largely depend for our existence upon food brought over the sea. Hence it is essential for us to prevent any belligerent innovation against our sea-borne supplies, while on the other hand, we favour the exercise of belligerent rights over the widest possible area. On England's ratification depends the fate of the Prize Court Convention, since without the concurrence of the first naval Power the agreement of the other nations will have small effect. At the same time, if all the other Powers ratify the Declaration of London we should virtually be bound to accept its terms, even if formally we did not adhere to it, because, as neutral, we should be unable to make any effective protest against a belligerent acting in accordance with the rules prescribed, unless we were willing to go to war to enforce our protest ; and as belligerent, we should almost certainly arouse the hostility of neutrals upon whom we claimed to enforce disabilities forbidden by those rules. In the annotation of the text which follows, an endeavour is made to set out the exact change which the Declaration proposes to introduce into the present prize law, so that it may be judged whether the naval experts and advisers who guided our attitude at the Conference were right, or whether, as their various critics contend, they have jeopardized vital interests of the country. In this introduction an attempt is made to estimate the value of the Declaration as a whole, and the validity of the criticism levelled against it.

The Declaration states in a preliminary provision that its rules correspond in substance with the generally recognised principles of International Law. But by this must be understood not that it is merely a conventional statement of the law previously

established, but that it formulates, in accordance with generally recognised principles, uniform and exact rules of practice in place of the hitherto vague and divergent usages. The statement in the Report gives a juster appreciation of the Declaration, when it says : " That the purpose of the Conference has been, above all, to note, to define, and, where needful, to complete what might be considered as customary law." The principles of prize law have in the past been largely established by eminent jurists working on theoretical grounds, and by naval commanders influenced by practical necessity. The Prize Courts of belligerent nations have produced some kind of rule from these conflicting elements, but naturally the rule has varied to a very considerable extent according to the special needs of the moment, and neutrals have not known from one war to another what were their exact responsibilities and liabilities. The Declaration, without making any essential innovations in the principles of the law, has found a middle way between existing rules which press hardest on neutrals and those which impose the severest restrictions upon belligerents, and has established this as the Common Law of the Signatory Powers. The motives which underlie the Declaration are well expressed in its preamble (see Appendix A, p. 136).

The double object which Sir Edward Grey emphasized as that to be pursued by our delegates was the maintenance in their integrity of those belligerent rights proved in the past to be essential to the successful assertion of British sea-power and to the defence of British Independence, together with the widest possible freedom for neutrals in the unhindered navigation of the seas. The aim of the delegates of other countries was doubtless similar. It was obviously not an easy task to secure this double object, because we could not demand more as neutrals than we were willing to concede as belligerents ; but the Conference claimed to have reconciled in an equitable and practical way the rights of belligerents with those of neutral commerce, and to have provided solutions for the conflicts of prize law which, while not in absolute agreement with the views peculiar to any country, shock the essential ideas of none.

Capture of
Private
Property at
Sea not inter-
fered with.

Before treating of the effect of the Declaration, it seems desirable, in view of much general misunderstanding, to state a few elementary facts about it. First, it is exclusively concerned with

the law between belligerents and neutrals, and does not affect in any way the rights of belligerents against enemy property at sea. The right of capture of private property at sea, as it is commonly called, which more accurately stated, is the right of a belligerent to capture the merchantmen of the enemy and any enemy goods upon them, remains absolutely untouched by the Declaration, and is only modified in a few minor details by the Conventions drawn up at the Hague in 1907. Nor is there the least ground for the suggestion, which has occasionally been made, that the International Prize Court might decide against the validity of the right. It is the most clearly and uniformly established international practice, which the Court would be bound to recognize; and indeed the text of the Declaration by inference, and the official Report explicitly, asserts the absolute power of a belligerent to capture or destroy an enemy vessel. Hence what some consider to be our most valuable offensive weapon against a maritime enemy will remain intact, if we ratify both the Declaration and the Prize Court Convention.

Secondly, the Declaration if ratified would be the first Code of International Maritime Law in war, and the International Prize Court if established would be the only means of preserving its proper administration. At present each belligerent acts upon his own understanding of what is contraband and what constitutes a breach of blockade, in what circumstances he may destroy all neutral prizes, and in what circumstances he may convert his merchantmen into warships; and his Prize Courts apply his understanding of the law. Hence, if we be neutral, and one of the belligerents declare that to be contraband which we deny to be contraband, or sink prizes of our subjects when we deny the right to sink, we must either put up with his conduct, or we can protest diplomatically and join in the war if we fail to get satisfaction. If, on the other hand, we are belligerents and our enemy makes innovations against neutrals trading with us, we cannot do anything except retaliate upon neutrals trading with him, as we did during the Napoleonic struggle. It is for the neutral countries, whose merchants are injured by the enemy's conduct, to protest, and, if they choose, to make his conduct a ground for declaring war. But if they do not choose to take this extreme step, all our complaints are of no more effect than if we complain

Advantage
of a Settled
Code.

of the enemy discharging torpedoes at our men-of-war. These are the merest truisms, but there is so much confused thinking about the position of belligerents and neutrals towards each other, that it may not be superfluous to state them.

Omissions
in the
Declaration.

Coming now to the effect of the Declaration, a word or two must be said upon the two questions on which the Conference was unproductive—the conversion of merchantmen into warships on the high seas, and the determination of the enemy character of cargoes. Much is made of these defects in the Declaration, but it should be remembered that the failure to formulate an agreement leaves us in the same position as we held before the Conference. The second point is acknowledged to be of little moment, and one which may safely be left to the International Prize Court to decide. Great Britain has always maintained that the actual residence, for commercial purposes, of the owner determines the character of his cargo during war. Thus, if we were at war with France, the cargo of a Belgian merchant carrying on business in French territory would be considered as a hostile cargo, and would be liable to capture if carried on a French vessel. Continental nations, on the other hand, claim that the nationality of the owner is the test of character in respect of innocent cargoes, and that residence in the enemy country does not prevent an individual from enjoying the privileges of a neutral for his commerce. Since the Declaration of Paris exempted from capture enemy goods, save contraband of war, carried in neutral bottoms, the divergence of standpoint has lost its importance; for the only goods now affected are those in enemy vessels, of which the owners will usually have enemy character both by nationality and domicile. Our representatives indeed, owing to the comparative unimportance of the matter, were willing to give up our standpoint in order to secure unanimity. The delegation of the United States, however, was not prepared to give up domicile as a test, so that while the Conference adopted the flag as the test of character of a ship, it merely laid down the rule, as regards goods, that the neutral or enemy character is determined by the character of the owner, which leaves the main question at issue open.

Conversion
of Merchant-
men on the
High Seas.

The other unsettled question, regarding the conversion of merchantmen, is, however, of first-rate importance. The Declaration

of Paris abolished privateering, but the Powers, anxious to use all their maritime strength in time of war, have found a new means of pressing into belligerent service a part of their mercantile marine. In consideration of subsidies which the State has granted towards the construction of the biggest Oceanic liners, England has made arrangements with the Cunard Company, Germany with the Nord-Deutscher Lloyd, the United States with the American Line, and other States with their chief shipping companies, to secure their largest vessels at the outbreak of hostilities, and utilise them as auxiliaries of the regular navy for scouting and commerce-destroying purposes. Great indignation, however, was caused in this country during the Russo-Japanese War by the action of two Russian ships which, passing through the Dardanelles as merchantmen, suddenly converted themselves into warships in the Red Sea, and commenced to hold up British vessels which they met in those waters. On the one hand we maintained that this was an infraction of the Treaty which forbade Russian ships of war to sail through the Dardanelles; on the other, that conversion of merchantmen on the high seas was anyhow illegal. The position of such vessels was discussed at length at the Hague Conference of 1907, and a convention was drawn up directing that the converted vessel must be placed under the direct authority, immediate control, and responsibility of the Power whose flag it flies; that its commander must be a naval officer, and that its new character must be announced as soon as possible in the lists of the belligerent's navy.

These rules sufficiently distinguish the character of converted merchantmen from that of the privateers of a century ago, which were privately-owned and privately-manned vessels that attacked the enemy's commerce for the purposes of private gain. But the crucial question as to where the conversion might take place was left open, and it has not been settled by the London Conference. As there appears to be some confusion on the point in the public mind, it may be as well to state that England's objection is not to the conversion of merchantmen in general—we propose to use a number of our own liners for naval purposes in case of war—but to their conversion on the high seas. Most of the Continental Powers, possessing as they do few ports outside Europe, claim a right to convert ships in their volunteer navy

whenever and wherever they choose. England, on the other hand, who, through her possession of naval stations in every sea, is in a stronger position, claims that the conversion must not take place after the opening of hostilities on the high seas, but only within the national jurisdiction. The Continental demand undoubtedly opens the way to grave abuses. The "sort c. warship" is able as a merchantman before conversion to obtain in a neutral port the hospitality and often the necessary supplies for her new career, then at a favourable moment to take out her armament, run up the naval flag, and swoop down on any merchantman, enemy or neutral, whom she may meet; and, later it may be, when fleeing from the enemy's cruisers, to resume her peaceful character and seek the shelter of a neutral port. The Conference was not unwilling to pass a rule that reconversion on the high seas to mercantile character is forbidden during the war; but as agreement on the main question was not attainable, the whole subject was, in the end, left open.

Effect of
Omission to
Settle the
Question.

It has been urged by several leading Chambers of Commerce in this country that the failure to secure the acceptance of our standpoint at the Conference should be made a ground for not ratifying the Declaration; but this seems illogical. The Declaration does not in any way prejudice our position in the matter; we are free to protest against any belligerent who adopts the practice in the future. But, it is said, the failure of the Hague and London Conferences to come to an agreement upon the subject shows that the Continental Powers intend, in case of war, to enforce their claim to convert merchantmen on the high seas. Very possibly. But they will do the same whether or not the Declaration is ratified, and our ratification will not tie our hands in the least, while the Hague Convention explicitly reserves our right of action. Supposing, then, we are neutral, and one of the belligerent's merchantmen, converted on the high seas, captures some of our vessels for carrying contraband, we may protest and, failing satisfaction, we may go to war. If, on the other hand, we are belligerent and the enemy's converted warship sinks some of our vessels, we can retaliate, if we choose, by converting our merchantmen on the seas and sinking his vessels. And if his converted warship captures neutral vessels bringing in supplies, the neutral Power may protest, and, if it chooses, may threaten war. But is

the objection, perhaps, that the ratification of the Declaration will involve the establishment of the International Prize Court, and that the question of the legality of conversion on the seas will fall to be determined by that tribunal? If so, the Court will place us in a much stronger position than we hold at present. As things are, the Prize Courts of the country which claims the rights to convert anywhere determine the legality of the capture; and inevitably they support the position of their country. If, however, the neutral can take an appeal from the National to the International Prize Court, it is very probable—nay, it is well-nigh certain—that the appellate Court will repudiate the belligerent's right and award the neutral compensation. It is one of the questions which we might safely leave to be determined according to the general principles of justice and equity; and it is significant that, at the London Conference, seven out of the ten Powers represented, taking our view, were in favour of prohibiting conversion except within the territorial jurisdiction. The seven judges of those countries would almost always form part of the International Court.

There is a great deal of wild talk about the terrible damage which the enemy's armoured merchantmen would do to our shipping at the outbreak of war; it is assumed that our navy is quite unable to protect our commerce, and that a country with the largest mercantile and naval marine in the world will be unable to prevent a few of the enemy's convertible liners from holding up our supplies. All this, however, edifying as it may be, has nothing to do with the merits of the Declaration of London. The whole effect of that instrument on the problem is, by facilitating the ratification of the Prize Court Convention, to give us a chance in future of recovering compensation as neutrals for captures made, as we hold illegally, by a belligerent warship converted on the high seas. Something is added on the subject later, but it may be said here that if the content of the Declaration is, on the whole, beneficial to this country, there is no good reason for suspending ratification of it on the ground of its omissions.

Turning now to the provisions of the Declaration, its outstanding features are the regulations on the subjects of Blockade and Contraband. Upon the first subject it adopts for the most part the Anglo-Saxon law, which varied considerably from the

Content of
the Declara-
tion.
The Law of
Blockade.

Continental rules ; but on one point a compromise is made between the two schools. The British rule has been that a neutral vessel is liable to capture at any part of her voyage to, or from, the blockaded port if she sailed with knowledge of the Blockade. The Continental practice has been that the neutral vessel must receive express notice of the Blockade from one of the warships of the belligerent squadron, and that it could only be condemned thereafter if taken within the blockaded zone. The Declaration provides that the vessel may only be captured within the area of operations of the warships detailed to render the Blockade effective, but that knowledge of the Blockade is presumed, if notification of it has been made by the belligerent to the neutral authorities before the vessel left its last port. The concession made by England, in limiting the area of capture, is more apparent than real, since it was declared by one of the English delegates that there is no instance in practice of a vessel being captured for breach of Blockade outside the actual sphere of operations of the blockading force. It should be remembered also that our existing rules of Blockade date from a time when the operations of naval war, as well as the transport of oversea commerce, were carried on in sailing vessels of comparatively modest dimensions, and when communication by electric telegraph was unknown. The complete change in the conditions renders possible a relaxation of the theory of Blockade, without in any way impairing its efficiency as an offensive weapon.

It has, too, been pointed out that the Declaration is silent about the use of mines in Blockade ; and as the Hague Convention does not prohibit the laying of automatic contact mines off the coast and ports of the enemy—unless the sole object be to interrupt commercial navigation—it is probable that in any future war mines will play an important part in the Blockade of ports where belligerent ships of war are lying, or where the enemy has an arsenal. In such cases the mines will form part of the effective force of the blockading squadron ; and therefore the slight restriction of the belligerent right of capturing blockade-runners, which is contained in the articles of the Declaration, will be more than compensated by the extended sense which the new weapons will give to “the zone of operations.”

In dealing with Contraband as with Blockade, the Declaration

adopts the general scheme of the Anglo-Saxon law, but it is in the detailed provisions which are designed to effectuate the scheme that it has incurred the most persistent and most cogent criticism. In the first place, following British traditions, it lays down the distinction between goods which are absolute Contraband, goods which are conditional Contraband, and goods which can in no case be declared Contraband in time of war; and it provides lists of articles and classes of articles which fall exclusively within each category. The enactment of a Free List is an innovation, and a great gain to neutrals, to whom it secures freedom from interference for a large part of their commerce in times of war. The settlement of the other lists also gives neutrals a certainty as to their risks in war time, which has hitherto been lacking. The lists of Contraband of both kinds, it is true, may be added to, but only so far as the additions proposed come within clear principles; and it will be for the International Prize Court to determine whether this condition is satisfied. Hitherto the doctrine generally upheld on the Continent has been that goods in war time are either Contraband simply or Non-contraband; and this has led them in their belligerent need to prohibit altogether the trade with the enemy countries in provisions, coal, and even the raw material of certain industries. The triplicate division and the definiteness which is given to the subject of Contraband by Declaration are an undoubted benefit to neutrals, and especially to England as the great carrying nation, as is also the fixing, on a uniform basis, of the penalty for the carriage of Contraband.

The Declaration further establishes a uniform rule, which meets the needs of belligerents, that a cargo of absolute Contra-^{The Doctrine of Continuous Voyage.}band may be captured, whatever the destination of the vessel, provided the goods are proved to be destined for the territory of the armed forces of the enemy. Clear and reasonable rules for establishing proof are laid down. It will be remembered that during the Boer War we claimed the right to capture Contraband cargo on several German vessels bound for Delagoa Bay, on the ground that the goods were to be transported thence by rail to the enemy's country. But upon serious protests being made by Germany we did not press our claim. The Declaration legalizes the right which we then claimed. On the other hand, conditional

Contraband, which includes foodstuffs, can only be captured (with a negligible exception) when found on board a vessel bound for the enemy's territory.

It has been persistently urged that this provision seriously prejudices our belligerent interests, on the ground that any Continental Power with whom we might be at war could thereby get unlimited supplies of conditional Contraband through contiguous neutral ports, the supplies being sent on to their ultimate destination by railway; while on the other hand all supplies of the kind coming to us would be subject to capture. Conditional Contraband is retained, it is said, only against insular powers. But in considering this objection two points must be noted. In the first place, even if we had secured the right of applying the doctrine of Continuous Voyage to conditional Contraband, a Continental enemy would be able to obtain cargoes of the kind with practical immunity. For, by its very nature, conditional Contraband, being useful for the ordinary civil population of any country, is such that, if shipped to a neutral port, it would be unreasonable, and would certainly cause serious friction with neutrals, if the belligerent were to seize it, on the ground that it was ultimately destined for the enemy authorities. And this is what he has to prove to justify his seizure; since it is destination to the enemy's forces, not to the enemy in general, which is the test. In the second place, it seems to be forgotten that with whatever Power we might be at war, there would be neutral ports on the opposite side of the Channel or North Sea at a few hours' steaming distance from our shores, to which supplies of conditional Contraband for this country on neutral ships could readily be shipped. By the provisions of the Declaration, these cargoes would be immune from capture during their transit from the country of origin to the neighbouring neutral port. And if our Navy could not protect these cargoes during their conveyance over the narrow seas, then, as has been said, nothing whatever would matter. So far, then, from being a dangerous concession by this country, the exclusion of the doctrine of Continuous Voyage from conditional Contraband really constitutes a great safeguard for our food supplies in time of war.

On the other hand, unless the Declaration is ratified, these supplies will be open to the attack of any enemy who will almost

Not applic-
able to Con-
ditional Con-
traband.

certainly apply to conditional as well as absolute Contraband the doctrine of Continuous Voyage, and who may declare provisions absolute Contraband. It is true that the Royal Commission, which considered the question of our Food Supplies in war a few years back, reported that there was no serious danger of this country being starved out, unless our fleets were absolutely driven from the seas. But at the same time it recognized the probabilities of a temporary scare, which would have all the evil effects on prices of an actual scarcity. And the cutting off of supplies from neutral countries, which might result from an enemy's proclamation of food-stuffs as absolute Contraband, would be likely to cause a scare. The provisions of the Declaration should make this calamity much less likely to arise, because by its rules food-stuffs can no more be declared absolute Contraband, and neutrals will be able to consign their cargoes in safety to the over-Channel ports, whence they can be conveyed to our shores under convoy.

The immunity given to neutral cargoes of conditional Contraband, provided they are shipped in the first instance to neutral ports, goes far to eliminate the risks alleged to be caused by the less satisfactory provision as to the presumptions affecting conditional Contraband, which has been the most controverted clause of the Declaration. Article 34, which lays down the conditions in which a belligerent may presume that a cargo of conditional Contraband is destined for the enemy forces or enemy authorities, and therefore is liable to capture, in form extends the established British rules on the point. It allows to the belligerent the presumption of a culpable destination, if the goods are consigned either to a contractor established in the enemy country, who notoriously supplies articles of this kind to the enemy, or to any place serving as a base for the armed forces of the enemy; and it is reasonably suggested that these stipulations would subject to capture many cargoes of an ambiguous character which were consigned to these or any other belligerent shores in a neutral vessel, and were, in fact, intended for the use of the Civil population.* Standing alone, then, the article would be open to some objection as imperilling the supplies for our people; but considered in conjunction with the article which abolishes the doctrine of Continuous Voyage for this kind of trade, it may be said that its

Presumption
of Hostile
Destination
of Condi-
tional Con-
traband.

* The question is discussed at greater length later. See pp. 32 and 66 ff.

mischievous possibilities are cut away both for occasions when we are neutral, and for those when we are belligerents. Moreover, Dr. Westlake, than whom there could be no greater authority, has pointed out that in any International agreement the noxious destination is sure to be stated with some generality as a matter of principle, and that the essence of the English decisions on the subject can hardly be better put than the Declaration puts it. The total effect, therefore, of the chapter on Contraband is that the belligerent's offensive powers against absolute Contraband are confirmed and strengthened, the neutral's protection for the carriage of conditional Contraband is increased, while his immunity for the carriage of innocent merchandise is for the first time assured, and, lastly, the belligerent's opportunities for securing imports needed for the Civil population are correspondingly safeguarded.

Exemption
from Search
of Convoyed
Vessels.

Closely bound up with the topic of contraband trade is the chapter dealing with Convoy. The Declaration provides that neutral merchantmen under Convoy of a neutral man-of-war shall be immune from search by a belligerent warship. The captain of the convoying ship may, however, be called on to investigate any suspected vessel, and hand her over if the suspicions prove justified. The rule involves a departure from the established British practice which refused to allow the interposition of the neutral authority to vary the rights of belligerent cruisers. But no other important naval Power shares our standpoint, and our right of search was expressly waived during the Crimean War, and has not, in fact, been exercised for nearly a century. Moreover, the immunity from capture of non-contraband enemy goods on board neutral vessels, which is provided by the Declaration of Paris, and the settlement of the lists of contraband, which is secured by the Declaration of London, will render the report of the convoying officer much more satisfactory to the belligerent than it would have been at a period when there were wide divergences between English and Continental ideas upon the right of capture. In view, too, of the growing difficulty in convoying merchantmen over the ocean, and the increasing unwillingness of a belligerent to offend neutral Powers by insisting upon a right to which they all object, this concession by England cannot be treated as a serious derogation of her belligerent rights.

After the chapters on Contraband and Blockade, the most controverted part of the Declaration is the chapter dealing with the Destruction of Neutral Prizes at Sea. Although the sinking of a prize robs the captor of his chance of prize-money, and his country of what might be a valuable addition to its mercantile marine, the difficulty of sparing prize crews from the complement of a modern cruiser, the frequent remoteness of a national port to which the prize must be taken before it can be condemned, and the risks of recapture during a long voyage, have induced belligerents in recent wars to sink neutral as well as enemy vessels which they have captured. As has been mentioned, during the Russo-Japanese War the Russian Pacific squadron sent to the bottom several British and German merchantmen, which they had seized for illegal carriage of Contraband; and later the Russian Prize Courts passed sentence upon them. It has always been permissible by English Prize Law to sink *enemy* prizes, which cannot be brought into port for judgment; but, except in cases of urgent necessity, our Courts and our Government have repudiated the belligerent's right to destroy *neutral* vessels before their legal condemnation. The Prize Law of Continental nations, on the other hand, has countenanced the practice, and has interpreted circumstances of necessity somewhat broadly. As in the case of converting merchantmen into warships, so in this question the strategic position of other Powers is very different from our own. We have naval ports in every ocean and every quarter of the globe, so that it is easy for our cruisers to bring a prize in for adjudication. Most other nations have but few colonies or naval stations, and those are separated by enormous distances; while a clause of the Hague Convention on Neutral Duties, confirming the general rule of Nations, forbids the setting up of a belligerent Prize Court on neutral territory. It is true that the same Convention allows a neutral Power to admit prizes to its ports, when they are brought there in order to be left under sequestration pending the decision of the Prize Court; but Great Britain and Japan voted against the acceptance of this rule, and many countries narrowly limit the stay of a prize ship in their waters. Hence the captor would in most cases have to bring the prize to a port of his country, which often would be a matter of great difficulty.

The Destruction of Neutral Prizes.

At the Hague Conference England found it impossible to

enforce upon the other nations her standpoint, that neutral prizes must always be brought in ; and at London a middle course was proposed and finally accepted, in which both sides made concessions. Laying down as the general rule that a neutral vessel which has been captured may not be destroyed, the Declaration provides, by way of exception, that, if the vessel is liable to confiscation, *i.e.* if more than half its cargo is Contraband, or if it is clearly trying to break Blockade, and it cannot be taken into port without danger to the safety of the warship or to the success of naval operations in which she is engaged at the time, it may be destroyed. Before destruction, however, all persons on board must be placed in safety, and all papers which are relevant for the purpose of deciding the validity of the capture must be taken on board the warship. Then, by way of deterrent against the abuse of the exceptional right, it is provided that the captor must pay full compensation to the neutral in a case of destruction, whenever he fails to prove, first, the exceptional necessity under which he acted, and, secondly, the validity of the capture, and in any case where he has destroyed innocent neutral goods. Thus restricted and limited, the right of destroying neutral prizes is certainly likely to be less mischievous to us as neutrals than it is at present under the various national Prize Laws, which place no definite limit upon it, and make no provision for payment of compensation.

It is objected with some force that for the adequate protection of neutral trade a proviso should have been inserted, that the mere inability to spare a prize crew should not constitute an element of danger such as would justify destruction ; for without this reserve it will be open, in almost every case, for the belligerent to assert that he could not bring the prize into port without endangering the success of his operations. Yet the British Manual of Prize Law, 1888, includes the inability of the captor to spare a prize crew among the conditions which justify the sinking of an *enemy* prize ; and the provision in the Declaration that a neutral prize must not be destroyed unless it would be liable to condemnation is a considerable safeguard to neutral merchants. With less force it is objected, that the Declaration places England in a less favourable position than other countries, since with her wealth of naval stations the necessity that

she will have to prove will be more stringent than that required of other Powers. This is true, in a sense; but it must be remembered that a belligerent will always prefer confiscation, after condemnation by a Prize Court, to destruction, since confiscation not only entitles the individual captors to the value of the goods condemned, but transfers the property in the neutral vessel to the captor's State. And in time of war the augmentation of the mercantile marine by capture is a valuable asset. On the whole, therefore, though the belligerent's need, justifying destruction, is not precisely defined, our position as neutrals is improved by the limitation which the Declaration places upon the foreign belligerent's claim to sink prizes; and our shipowners are more likely to obtain substantial justice and fair compensation from the International Prize Court, in a case where they complain of illegal destruction, than they have done in the past from diplomatic representation. We have not carried our point altogether, but we are better off than we were without the Declaration.

The remaining chapter of the Declaration, which merits special attention, is that dealing with transfers of vessels to a neutral flag. It is commonly said that, since the Declaration of Paris renders immune innocent enemy goods carried in neutral bottoms, shipowners of the belligerent State will endeavour at the outbreak of hostilities to transfer a large part of their mercantile marine to some neutral flag, so as to secure their vessels and their cargoes from hostile capture. When the Spanish-American War broke out, a rush was, in fact, made by the owners of vessels in the United States to secure the protection of a neutral flag; but when the progress of the war soon revealed the groundlessness of the scares of Spanish raids, most of the attempted transfers were not completed. In any case, it is doubtful whether a belligerent captor would have recognized them. The present English rule is that, in case of war or expectation of war, the purported sale of a ship or a cargo by a transfer of documents, which would be sufficient to bind the parties in the municipal courts, is not sufficient to change the property as against captors, so long as the ship or cargo is in transition and has not been delivered to the purchaser. Moreover, liens, whether for the benefit of an enemy on a neutral ship, or vice-versa, are not

Transfer of
Enemy
Vessels to a
Neutral
Flag.

regarded by the captor's Prize Court ; and the purported sale to the neutral is held void if a right has been reserved to the vendor to repurchase or recover his vessel, or if otherwise there has not been a bonâ-fide out-and-out sale. In other words, the English law has refused to recognize a colourable transfer of property on the sea from enemy to neutral, made during or in prospect of war, in order to escape the penalties of belligerent capture. Foreign rules have gone further in their disregard of transfers made in time of war. In some countries, such as France, the transfer of an enemy vessel to a neutral during war is altogether disregarded, and transfers immediately before war are very jealously scrutinized.

The Declaration on this point, as on so many others, has taken a middle course between the varying rules, and by establishing an elaborate system of presumptions has given definiteness to the conditions under which the changes of flag will be possible. The general effect of its provisions is that the transfer is presumed to be void, unless made more than thirty days before the outbreak of hostilities, unconditionally, completely, and in due legal form. But the presumption may be rebutted, except in special circumstances. Shipowners and shippers will now know exactly how they stand ; and the idea that the mercantile marine of our enemy will be preserved from capture by our cruisers through a wholesale conversion to the neutral flag at the outbreak of war is decisively corrected. As to our own mercantile marine, it would not be likely, in any case, to attempt to secure the protection of another flag. Nor could it have done so before the Declaration, partly because, as stated, foreign Prize Law has narrowly limited the benefit of such transfers, and partly because it must mainly rely for its safety on the strength of the British Navy. It may be said that the articles of the Declaration lessen the chances of the carrying fleet of a belligerent Power seeking the protection of our neutral flag ; but this possible loss of profit to our individual shipowners is more than compensated by the strengthening of our belligerent rights in checking transfers of the enemy's vessels made in prospect of war to escape capture by our cruisers.

The provisions in the Declaration as to Unneutral Service, Resistance to Search, and Compensation, are generally acknowledged to be sound ; and it need only be remarked here of the last that it establishes for the first time a general rule that, if the

capture of a vessel or cargo is not upheld by the Prize Court, unless there were good reasons for the capture, the owners are entitled to compensation. This rule will have the effect of checking wanton interference with neutral commerce, and of giving the neutral subject some relief, of which he has not been assured hitherto, against the abuse of belligerent rights.

The Declaration concludes with some general articles of ^{Final Provisions.} importance. Its provisions must be treated as a whole, and cannot be separated; and the Signatory Powers undertake to insure the mutual observance of its rules in any war in which all the belligerents are parties thereto. In the case of many international conventions some of the Signatory Powers not infrequently reserve their consent to certain provisions, of which they do not approve, while accepting the rest; but the Declaration having been built up by balancing the concession of one group of States against the concession of another, it would obviously have been inequitable to permit a nation to select those provisions which it happened to welcome as concessions to its own point of view, and reject the remainder. It is impracticable, then, for Great Britain to denounce certain articles of the Declaration, as some have suggested that we should do. There may be opportunity for amending the Declaration before it is ratified by agreement between all the Signatory Powers; but the Code must be adopted or rejected as a whole, and it is on the balance of advantage from all its provisions that its fate must depend. There is nothing, however, to prevent Great Britain appending to the exchange of ratifications reservations upon the two or three points on which the Declaration has failed to settle the law. The provision in the Declaration only applies to the rules contained in it; and upon the questions of converting merchantmen or the legality of a neutral engaging in the coasting trade of a belligerent, on which the Declaration is also silent, we could reserve the liberty of objecting to any judgment of the International Prize Court which was contrary to our standpoint.

The Declaration, it is seen, is strictly binding only in wars in which all the belligerents are signatories, just as the Declaration of Paris was nominally only binding upon the Powers who signed it. Thus in a war between Great Britain and the Ottoman Empire, which is not a party, neither side would be bound to observe its

provisions, nor could neutrals protest against the disregard of any of them. But in practice the rules which have received the assent of the chief naval Powers are likely to be adopted by all belligerents in future naval warfare ; just as in practice the Declaration of Paris has received general recognition even from Powers such as the United States, which originally refused to accept it. As the majority of the Signatory Powers would in all probability be neutral in any war, there will be such a weight of neutral power to uphold it as will compel an adherence to the Declaration on the part of the signatories who may be belligerent. The sanction of the Declaration is, therefore, not only the moral obligation of States to preserve treaty-provisions, but the belligerent's fear of arousing the ill-will and, possibly, the open hostility of neutrals by violating their conventional rights.

Blinding
Character of
the Declara-
tion.

A *locus poenitentiae* is, however, provided for any State which, after testing the Code in war, finds that its provisions prejudice its vital interests. The Declaration may be denounced by any signatory twelve years after ratification, and afterwards at intervals of six years, if notice of at least one year be given by the signatory intending to denounce. Some of the Powers who signed the Hague Convention in 1899, relative to the use of projectiles and balloons, found in 1907 that they were not in a position to renew the Convention. Similarly it may happen that some States who ratify the Declaration, in the expectation of profiting from it as neutrals, will discover subsequently that they cannot renew their adherence after trial of it as belligerents. But this power of contracting out of the Declaration is subject to the consideration that the International Prize Court will doubtless treat it as declaratory of the Law of Nations, until, at any rate, the majority of Signatory Powers declare that they will no longer be bound by it. Hence the Declaration must be regarded as a permanent Code of Maritime Law in war, and its value for this country should be estimated accordingly.

Criticisms of
the Declara-
tion.

It is necessary now to take more careful stock of the objections which have been advanced against the Declaration. Originally received with general commendation, it has recently come in this country to be the object of unsparing criticism, based upon opposite points of view, and in some cases on an inadequate appreciation of the present state of the Laws of Maritime War. On the

one hand, Mr. Gibson Bowles and his followers attack the Declaration as an instrument devised against belligerents by neutrals. According to them, it takes away a number of valuable established rights which Great Britain has exercised in times of war, and consequently affects in a vital way our offensive and defensive powers in a possible naval struggle. On the other hand, the Chambers of Commerce of the great commercial centres—London, Glasgow, Edinburgh, Manchester and Liverpool, etc.—and several distinguished international lawyers, have attacked the Declaration because, in their opinion, certain of its provisions menace our food-supply in times of war, and others involve novel risks to neutral commerce, which seriously prejudice neutral interests. One exponent of this point of view goes so far as to say that it is “a belligerent’s declaration against neutrals, a naval declaration against merchants, a theoretician’s declaration against practical business people.” And the general effect of this class of criticism is that the Declaration derogates from the acknowledged rights of neutrals, and places new liabilities upon their trade.

Now it is clear that the declaration cannot have both these effects ; it cannot at once take away from belligerent rights and add to the liabilities of neutrals ; and it is instructive to note that both classes of critics in several cases attack the same article from opposite and contrary grounds. Compromises by their very nature cannot satisfy the extremists of either party, and the Declaration, being a compromise between the belligerent and neutral claims of the Powers, is therefore exposed to a cross-fire of criticism. Many, however, of the objections urged against it are misconceived, in that they are based upon the critic’s idea of what the existing law and usage should be, and not on what it is ; and also on a rather naïf assumption that in case of war our enemy would be bound to apply against us and against neutrals trading with us the rules of our Prize Law rather than the rules of his own Prize Law. An appeal is made to a supposed Rule of Nations, which is, in all cases, our Prize Law, and which, it is alleged, the articles of the Declaration abrogate.

Thus both Mr. Bowles and the Chamber of Commerce, united for once in an unholy alliance, strongly attack the articles of the Declaration which allow, under exceptional conditions and subject to provision for compensation, the destruction of neutral prizes.

Inconsistent
Points of
View.

Criticism of
the Articles
dealing with
Destruction
of Prizes.

Mr. Bowles lays it down that the British rule and the Rule of Nations is and always has been that, if the captor cannot bring in the neutral prize for adjudication, it is his bounden duty to release her, while in no case whatever is he justified in destroying her. The fact is, however, that Lord Stowell, the great architect of our Prize Law, recognized the necessity, in exceptional cases, of sinking neutral prizes ; and laid down that, if it were done and afterwards the vessel were proved innocent, the shipowners must have full compensation. Outside Great Britain, too, there is almost a *consensus gentium* that the destruction of prizes is legitimate, in cases of necessity, whether the prizes are enemy or neutral vessels, and no obligation to pay compensation is recognized. The Declaration offers this advantage over the present unregulated usage of Foreign Powers that it provides for the payment of full compensation, both when the capture is not afterwards upheld, and when the necessity of destruction is not satisfactorily made out by the belligerent. Hence, though it does not fully accept the British point of view, it goes a long way to give our traders that assurance against wanton and reckless destruction from which they suffered during the Russo-Japanese War, and for which diplomatic representations have failed to obtain adequate restitution.

Penalty for
Contraband.

Again, Mr. Bowles attacks with abundance of rhetoric the article which provides for the condemnation of the Contraband carrier's vessel only when the Contraband forms more than half the cargo ; and he seems to think that the present British rule and the Rule of Nations is that the vessel may always be condemned for carrying Contraband. The fact is, however, that the vessel by the British doctrine is usually released, and can only be condemned if the shipowner is also the owner of the cargo, or the ship's papers were false or fraudulent ; and there is no Rule of Nations on the point at all, some countries condemning the vessel if the offending cargo is three-fourths, some if it is half, some if it is a third of the whole. The Declaration therefore adds to, instead of detracting from the belligerent rights which Great Britain has claimed in this respect.

Lists of
Contraband.

Mr. Bowles again falls foul of the very guarded provision in the Declaration, which allows a belligerent to add to the lists of absolute and conditional Contraband. By Articles 23 & 25 he says

anything may be added to the lists of absolute and conditional Contraband by the simple declaration of a belligerent Power, and this alleged right he stigmatises as one of the most monstrous and abusive of all the monstrous and abusive features of the Declaration. Yet, at the present time, a belligerent has an absolutely uncontrolled power of fixing the lists of articles which it will treat as Contraband during the war, while the Declaration classifies every known article which can be supposed to be of use for war in one of the two divisions. Moreover the clauses impugned by Mr. Bowles provide that only things exclusively used for war, and susceptible of use for war respectively, may be added. And as a further security, the International Prize Court will have the right to determine whether any addition was validly made by the belligerent.

Again, Mr. Bowles denounces the provisions in the Declaration about the transfer of enemy vessels to a neutral flag, on the ground that they would assist an enemy to preserve his mercantile marine from capture. But it has been shown that the present English rules are much less severe against the validity of transfers made in prospect of war than those prescribed by the Declaration.

Transfer of
Vessels.

When Mr. Bowles does not misunderstand the present state of our law, he misrepresents, no doubt unconsciously, the proposals of the Declaration, and gives an inaccurate view of their effect. Article 32, he says, which deals with the conclusiveness of a ship's papers as to its destination, "throws wide open the sanction to a vessel carrying Contraband the further means of escape, always hitherto practised wholesale in war, by false papers made out for a false destination." But the Official Report of the Declaration explicitly states that the ship's papers are only conclusive when no facts show their evidences to be false; and the Article must be read in the light of this commentary.

Conclusive-
ness of Ship's
Papers.

Mr. Bowles protests against our concession in the Law of Blockade, and states that by the Declaration, once the blockade-runner is outside the zone of operations of the warships, he may snap his fingers at the blockader. But the Declaration explicitly provides that a vessel which has broken Blockade is liable to capture, so long as she is pursued by a ship of the blockading force.

Mr. Bowles sees another most mischievous concession on our part in the articles referring to Unneutral Service. "A neutral,"

Unneutral
Service.

he says, "may now with immunity carry either dispatches or commissions for the enemy, provided only that he is not at that time *exclusively* engaged in doing him that service." Here is a complete confusion: for one article of the Declaration provides that a neutral vessel will be condemned, if she is on a voyage specially undertaken, *i.e.* if she does anything not in the ordinary course of her voyaging, to transport passengers or to transmit intelligence in the interests of the enemy; while another provides that if she is exclusively engaged in the service, she is not merely liable to condemnation, but may be treated as an enemy merchant-vessel.

Enemy
Character.

Where Mr. Bowles does not misunderstand the present law or misrepresent the Declaration, he is prone to view the changes made with a lack of proportion. Thus he declares that the failure to settle whether domicile or nationality is the test of enemy's character, "leaves unsettled the central point of all, and unsettles the Declaration of Paris as well as the Declaration of London." It is obvious, on a moment's reflection, that the failure does not unsettle anything at all, since the divergence of criterion already exists, and the Prize Courts of each country will continue their present practice. But the point is of minor importance anyhow, since the only goods affected by the divergence are those belonging to enemy persons living in neutral countries and to neutral persons living in enemy countries, which may be loaded on enemy vessels. Since most enemy subjects are domiciled in the country of their allegiance, the goods affected form a very small part of the enemy's commerce. Nor is there any ground for Mr. Bowles' prophecy that if the question comes to the International Prize Court, it will, no doubt, be determined against Great Britain. At the London Conference the Powers were equally divided, and the chances of our attitude being upheld by the appellate tribunal are at least even.

Convoy.

Then Mr. Bowles is much concerned about our concession in connection with convoyed neutral merchantmen. But we have not chosen to exercise our theoretical right of search in such cases for a century, and the experts—other than Mr. Bowles—both here and in the United States are agreed that it is of little value, while its enforcement in the teeth of general neutral opposition would probably embroil us with several neutral Powers.

Conditional
Contraband.

Most amazingly of all, Mr. Bowles attacks the restrictions in the Declaration on the right of capturing conditional Contraband

as an infringement of our belligerent rights. According to the Declaration, conditional Contraband is to be liable to capture only if shown to be destined for the use of armed forces or a Government Department of the enemy State. Mr. Bowles complains that the presumption of the prohibited destination exists *only* if the goods are consigned to enemy authorities, to a fortified place belonging to the enemy or other place serving as a base for the armed forces of the enemy, or to a trader established in the enemy country, who, as a matter of common knowledge, supplies articles of this kind to the enemy. One would gather from his indignation that the Declaration places great restrictions upon a much wider right of capture of conditional Contraband hitherto recognized. But the fact is, that by the English doctrine at present, articles of conditional contraband can be captured only if destined for military or naval use, which destination is presumed to exist, if the cargo is consigned to a military or naval port of the enemy or a place which is mainly used for military or naval equipment. This is a rather narrower criterion, and, as is pointed out later, the presumptions of hostile destination for conditional Contraband set up by the Declaration, if taken alone, afford the most vulnerable point of attack to those who oppose the Declaration as infringing the rights of neutrals. So much for Mr. Bowles, and the objections to the Declaration on the ground that it derogates from our belligerent rights.

Turning now to the objections of the other class of critics, who are mainly concerned for the safety of our food-supplies in war, some complain that the Declaration of London makes food-stuffs conditional Contraband. The fact, however, is that food-stuffs in the past have regularly been treated as conditional Contraband by Great Britain ; that they have been treated by several Foreign belligerent Powers as absolute Contraband ; and that the Declaration explicitly restricts their Contraband character to the case of food-stuffs proved to be destined for the armed forces or for a Government Department of the enemy State. One effect of ratifying the Declaration would consequently be that food-supplies could not in the future be declared absolute Contraband, and that the doctrine of Continuous Voyage could not be applied to them, so as to endanger cargoes sent to this country through neutral ports.

Food-sup-
plies in War.

It is objected with more force that the presumptions of hostile destination of conditional Contraband, established by the Declaration, press more hardly than the present British practice upon the neutral trader. Article 34, it has been noticed, fixes such a presumption if the goods are consigned to a fortified place belonging to the enemy, or to any other place serving as a base to the armed forces of the enemy, or to a trader who notoriously supplies the enemy Government; and it is said that the last two presumptions are innovations prejudicial to our interests. Under our present rule conditional Contraband has been liable to capture when shipped under circumstances that rendered it probable that it was destined for the armed forces of the belligerent; and the purport of the new rule is rather to give definiteness to the existing practice than to set up new belligerent rights. But it has been questioned whether, in giving definiteness, it has not, unconsciously perhaps, extended the rights of a belligerent interference, and at the same time introduced a loose and unsatisfactory test of liability. It is true that the presumptions of Article 34 are not irrebuttable, and are intended merely to shift the onus of proof of Contraband, which is usually upon the captor, to the neutral trader in particular cases; but the terms "base for the armed forces" and "a trader who notoriously supplies the enemy Government"—the word for trader in the French text is *commerçant*—are so indefinite, that it is suspected that almost any cargo of food-stuffs shipped directly in a neutral bottom to an important port of Great Britain would be liable to capture. Ports like Glasgow, Leith, Hull, and Bristol, though not strictly naval centres, might be classed as bases for an armed force, and consequently all trade in conditional Contraband with these ports might be held up. On the other hand, it may be argued in favour of the Declaration that under present usage, when we are belligerent, our enemy would be likely to treat food-supplies consigned to our shores in neutral vessels with at least equal severity; and that, if the agreement is ratified, he will be prevented from treating them as absolute Contraband, he will in every case have to make out his claim of a direct hostile destination, and he will not be able to apply the doctrine of Continuous Voyage so as to seize them on suspicion that they are to be transported to these

coasts, if the immediate destination of the vessel is a neutral port ; while, when we are neutral, the rules of the Declaration secure a very considerable part of our trade from molestation, and again prevent the proclamation of food-stuffs as absolute Contraband, which has occurred several times in the past.

It is further objected by several of the Chambers of Commerce that the article of the Declaration, which provides that any individual embodied in the armed forces of the enemy, who is found on board a neutral merchantman, may be made a prisoner, involves a new interference with neutral shipping. Any ship, it is said, might be stopped by a belligerent vessel and searched, with the view of ascertaining whether any member of the enemy's armed forces was on board. But as the practice stands at present, every neutral vessel is liable to the belligerent's right of search on the high seas ; and it may not only be stopped and searched for this purpose by a belligerent, but if any such person be found on board, it may be taken into a Prize Court for the determination of the question whether it has been guilty of the offence of Unneutral Service and detained there for an indefinite period. The rule of the Declaration is therefore not a new hardship upon neutrals, but rather a mitigation of the existing hardship, since it will have the effect of allowing the vessel to be released by the delivery up of the individuals whose presence is offensive to the belligerents.

Power to
Remove
Enemy Off-
cers from
Neutral
Vessels.

Lastly, objection is taken to the Declaration on the ground that it contains no provision regarding the conversion of merchant vessels into men-of-war on the high seas. The objection has been already discussed in some detail ; and it is trenchantly pointed out by the Foreign Office, in reply to its critics, that the Declaration leaves Great Britain in the same position as she held before the Conference ; and that the failure to come to an agreement on this question with other Naval Powers does not afford any reason for rejecting a satisfactory agreement with those Powers on a number of other matters, on which such agreement is of the utmost value to this country. The question really comes to this :—For those who think the Declaration, as it stands, on the whole beneficial, the absence of reference to the conversion of merchantmen can be no reason for not ratifying it ; to those, on the other hand, who think the Declaration, as it stands, on the whole prejudicial to our interests, that omission is an additional

Conversion of
Merchant-
men.

reason for disapproving of ratification. It is, however, an utter misrepresentation to say, as some persons and newspapers have done, that the Declaration legalizes the conversion of merchantmen into warships on the high seas ; it says nothing about the question, and leaves it just where it was before. It is an equal misrepresentation to suggest, as Mr. Bowles has done, that the ratification of the Declaration and the adoption of the Hague Convention on the subject will together have that effect. The Hague Convention in its preamble expressly leaves open the question of the legality of conversion on the high seas ; and the silence of the Declaration cannot possibly be taken to amount to a recession on our part from the position which we have taken up. As has been stated above, we can also, if we choose, annex a special reservation, on ratifying the Declaration and the International Prize Court Convention, to the effect that we intend to maintain our standpoint on this matter. The advisability of adopting the Declaration may therefore be considered quite apart from the problems of the law of maritime capture which it has failed to settle ; though it may be open to Great Britain or any other Power to refuse to ratify the International Prize Court Convention until some satisfactory solution of all those problems has been arrived at.

Present Position of the Declaration.
Method of Ratification.

This brings us to the consideration of the present position of the Declaration. It has been represented from several quarters that it should be ratified, if at all, by Act of Parliament and not by an act of the Royal Prerogative. The Secretary for Foreign Affairs, on his part, has promised that the Declaration shall not be ratified till both Houses of Parliament have had an opportunity of discussing its provisions. At present the Declaration is signed by the English and Foreign plenipotentiaries, but the constitutional crisis and the pressure of other business have prevented an opportunity presenting itself for Parliamentary debate till this year. But it may be assumed that the Government will certainly oppose any proposal for a direct ratification by Parliament. The constitutional practice is that the power of making and ratifying treaties is entirely a part of the Crown's prerogative, provided that, when a treaty affects the rights of the King's subjects, because it involves either a charge upon the people or a change in the general law of the land, it is submitted for the approval of Parliament before ratification, or it is ratified under conditions.

It might be contended indeed that the Declaration of London is not affected by this proviso, on the ground that it does not change the general law of the land, the law administered by British Prize Courts being not a fixed statutory law or a part of the Common Law, but the Law of Nations, liable to constant development either by the growth of new usage or by international agreement. But while this attitude might be taken up in theory, practically it is recognized that the Declaration so affects the position of our neutral commerce when other nations are at war, and the rights of our warships when we are at war, that it would not be right to bring it into operation without the approval of Parliament. Similarly in the case of the Declaration of Paris of 1856, opportunity was given for a debate in Parliament upon the changes which it introduced into our Prize Law, though no formal ratification was needed for that instrument.

Moreover the International Prize Court Convention of 1907, Naval Prize Bill. drawn up at the Hague, with which the Declaration of London is intimately bound up, cannot be carried into effect by Great Britain without the introduction of an Act of Parliament; and it has been suggested that upon the consideration of the Bill to legalize appeals from our Courts to the Hague Tribunal the ratification of the Declaration will be discussed. At present our Prize jurisdiction is vested in the Admiralty Division of the High Court, from which an appeal lies to the Judicial Committee of the Privy Council; and in order to enable an appeal to be carried from this court to the International Tribunal proposed by the Hague Convention, a Naval Prize Bill was introduced into the House of Commons in the Autumn Session of 1910.* The Bill, however, was one of the hapless innocents strangled at their birth, and it will be necessary in the new Parliament for another Bill to be introduced with the same object. Against the proposal to combine the discussion of the Declaration of London and the International Prize Court Convention with the debate on the Naval Prize Bill, it has been submitted by Professor Holland and others that the Bill is, for the most part, an uncontroversial measure of codification, whereas the Convention and the Declaration involve great changes in our rights and duties as belligerents and neutrals. They deserve, therefore, to have separate and careful examination, and ought not to be tacked on to other business. On the other hand,

* See Appendix D, pp. 171, ff.

the two International agreements logically and historically hang together ; and it may be feasible to introduce a Bill preliminary to the Bill consolidating the law of Naval Prize, providing (1) for an appeal from the Privy Council or Admiralty Division of the High Court to the Hague Tribunal ; and (2) for the adoption by our Prize Courts of the Declaration of London as a statement of our Prize Law.

Interdependence of Declaration and Prize Court Schemes.

It is possible, of course, that either the Declaration might be approved without the Prize Court, or Prize Court without the Declaration. There are some who regard it as a very dangerous step to allow our belligerent usages to be called into question before an International Court, which will have power to determine their validity. It is obvious, however, that we cannot enjoy that protection of our neutral commerce against belligerent abuse which an international appellate Prize Court can give, unless we are at the same time willing to give other nations the same chance of protection against a possible abuse of belligerent rights on our part ; and it is a matter for Parliament to consider whether, as the greatest commercial nation in the world, we have not more to gain than to lose by supporting the establishment of the International Prize Court, quite apart from the broader considerations of international progress and amity, which the Court is calculated to advance. Admittedly, however, it would be dangerous for us to adopt the Prize Court scheme till we know the law which the Court would administer, and therefore the Declaration of London must logically be approved of before, or at the same time as, the Hague Convention is ratified. Possibly Parliamentary discussion of its provisions will lead to the conclusion that it is beneficial for the most part, but that a few of its clauses requires amendment before they are acceptable to this country. In that case, it is submitted, two courses will be open to the Government : either they may summon a fresh Conference of the Naval Powers who drew up the Declaration to revise the objectionable provisions, or they may leave the Declaration unratified, and bring their proposals for its amendment preparatory to its ratification before the third Hague Peace Conference, which is to be called together in 1914. At that Conference the rules and practices of war on sea are likely again to form an important subject of consideration ; and if no general agreement has been ratified before it meets, the Declaration of London will afford an excellent basis for a Code.

Chances of Amendment.

The larger part of its provisions should in any case merit general acceptance, for they establish a clear and uniform law without making any serious change. Hence, whether or not it is ratified in the near future, the Declaration must be treated as a document of the first importance in the development of the law of neutrality.

In dealing with the present position and prospects of the Declaration, it is noteworthy that the Commonwealth Parliament of Australia has placed discussion of its terms upon the programme which it suggests for the Imperial Conference that is to take place in London this year. Like several of our domestic bodies, it regards with misgiving the provisions of the Declaration relating to Conditional Contraband and the Destruction of Neutral Prizes. It is now certain that this proposal of the Australian programme for the Imperial Conference will be adopted, and that the representatives of the self-governing Dominions will have an opportunity of discussing the Declaration, which affects the rights of British subjects generally. It is probable that it will not be submitted to Parliament till after its consideration by them. Great Britain's ratification, it need hardly be said, will bind the whole Empire.

The Imperial
Conference
and the
Declaration.

Altogether therefore, whether viewed in its international or in its constitutional bearings, the fate of the Declaration of London is a subject of peculiar importance and interest; and it is therefore most desirable that before judgment is passed, its provisions should be carefully weighed, as well in respect of their probable consequences as in comparison with the present practice of Great Britain and other nations. In forming a judgment the main considerations to be borne in mind are:—

Conclusions.

(1) The Declaration leaves untouched,—and the Official Report upon it directly affirms,—our right to capture all enemy vessels and all enemy goods on them.

(2) It establishes a certain and uniform law of Blockade and Contraband in place of the existing unstable and varying rules of different nations, which have caused constant friction in the past.

(3) It lays down clear and uniform rules on all the other questions which were unsettled in the relations of belligerents and neutrals at sea, save on

three points: (*a*) Whether belligerents may convert certain of their merchant vessels into warships on the high seas; (*b*) whether nationality or domicile determines the enemy or neutral character of sea-borne commerce; (*c*) whether a neutral vessel, which engages during war in the colonial or coasting trade of a belligerent closed to it in time of peace, may be condemned for Unneutral Service.

(4) On these three points the Declaration itself leaves our position unaffected; but if, as the result of ratifying the Declaration, Great Britain proceeds to ratify the International Prize Court Convention, the points may come up to be determined by that tribunal; and we should be bound by its decision, unless we expressly reserved our liberty to object to any judgment upon them which was opposed to our standpoint. It is within our power to attach such a reservation to the exchange of ratifications.

(5) The International Prize Court, which would consist of fifteen judges of acknowledged eminence, the majority appointed by neutral States, would determine the three questions left open by the Declaration according to "the general principles of justice and equity," which, it may be hoped, would agree with our views. It would moreover provide an effective check upon any partisan interpretation of the articles of the Declaration which might be given by National Prize Courts, and would prevent any unfair belligerent innovation against neutrals. It would, in fact, maintain the Declaration of London as the Charter of Neutrals in maritime war. And the combined effect of the Declaration and the International Court would be to substitute for the present

uncertain and shifting national laws and usages, applied by national and partial Courts, a certain and stable law between all belligerents and neutrals, which would be enforced in the last resort by the decisions of an international and impartial tribunal.

(6) Finally, it must be left to the judgment of the Government, with the aid of the Imperial Conference and of Parliament, to determine,—as the English delegates said in their report to Sir Edward Grey,—“to what extent the rules of the Declaration themselves will safeguard the legitimate rights and interests of Great Britain; and how far their claim to general validity, and therefore to general respect, is made good by their inherent justice and by their conformity with the true Law of Nations, of which, according to the view always upheld by this country, it is an essential feature that it should flow from the recognition of the principles of right and of fair dealing common to all peoples.”

It may be useful to summarise here the gains and the concessions which Great Britain has made in the Declaration. As belligerents we have obtained the right—

(1) To capture absolute contraband cargo when there is evidence that it is destined for the enemy's country, though the immediate destination of the vessel is a neutral port.

(2) To confiscate the vessel carrying contraband when the noxious goods form more than half the cargo.

(3) To confiscate enemy merchantmen transferred to the neutral flag within a month of or at any time after the outbreak of hostilities, unless the neutral can prove that the transfer was not made to avoid capture.

On the other hand, we have given up the claim—

(1) To capture vessels for an alleged design to break blockade at any distance from the blockaded coast, which has never in practice led to confiscation.

(2) To search neutral merchantmen sailing under the convoy of a neutral man-of-war, which has not in practice been exercised for a century.

(3) To treat as enemy property the non-contraband produce of enemy soil owned by a neutral subject resident in a neutral State.

As neutrals we have gained for ourselves, and also for the subjects of other Powers trading with us when we are at war—

(1) The exclusion of food-stuffs and fuel from the list of absolute contraband.

(2) The exclusion of the raw materials of industry from the category of contraband at all.

(3) The immunity from capture of cargoes of Conditional Contraband shipped to a belligerent country *via* neutral ports, so long as they are on a neutral vessel with a neutral destination.

(4) The exclusion of the doctrine of Continuous Voyage from the law of Blockade.

(5) The provision of compensation for neutral merchants whose vessels and cargoes have been improperly sunk by the captor, or have been captured without sufficient reason.

(6) The immunity from capture of a neutral vessel which is innocently transporting individuals embodied in a belligerent's armed forces, or which is carrying despatches of a belligerent without the knowledge of any responsible person.

On the other hand, we have given up only the

bare claim that neutral prizes cannot in any circumstances be sunk by a belligerent, a claim which has not been acquiesced in by any other Power, and which it is well-nigh certain they would never concede.

It is submitted, then, that we have attained by the Declaration the two objects on which Sir Edward Grey laid stress in his Instructions to our delegates; the maintenance in their integrity of those belligerent rights which are essential to the assertion of our sea-power, and the establishment of greater security for the trade of our shipowners and merchants when we are neutral. And if it is said that we have not adequately safeguarded by the Declaration the commerce of neutrals trading with us when we are at war, it is submitted that we have at any rate made their position more secure than it is to-day, that we have obtained several valuable concessions from Continental Powers, and that, in any case, if other nations as neutrals are willing to submit to certain belligerent practices, because they regard them as essential to their safety when they themselves are at war, we cannot protest with any effect. If we fail to ratify the Declaration of London and the International Prize Court Convention, which we have promoted, we shall gain nothing as belligerents, we shall lose much as neutrals, and we shall suffer a serious loss of prestige, and forfeit the confidence of other Powers. If, on the other hand, we ratify the two International agreements, we shall strengthen our position for all circumstances, and it will be put down to our credit that we have taken the lead in establishing the first truly International Law of War, and the first truly International Court of Justice.

PART II.

TEXT OF THE DECLARATION OF LONDON AND NOTES.

PRELIMINARY PROVISION.

THE Signatory Powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

This provision indicates the scope and object of the whole Declaration. The broad principles of international law in its relation to the rights of belligerents over neutrals at sea were hitherto fairly well recognized by the Great Powers ; but there was an utter lack of uniformity in the specific application of them. By the Declaration a great approach to uniformity is achieved. The International Prize Court, in the absence of treaty provisions covering a question of law which arises between a belligerent and a neutral, is to apply the rules of international law. And the effect of the preliminary statement in the Declaration is to make its articles rules of international law, which are binding upon the signatories in their mutual relations, and which the International Court will be called upon to apply. Appeals from the decisions of National Prize Courts may be taken to the International Prize Court : (1) by a neutral Power, if the judgment of the national tribunals affects its property or the property of its subjects or citizens, or if the capture of an enemy vessel is alleged to have taken place in its territorial waters ; (2) by a neutral individual, if the judgment of the National Court affects his property ; (3) by an enemy subject, if the judgment of the National Court affects his

cargo on board a neutral ship, or if the seizure by the captor is alleged to have been effected in violation of a treaty in force between the belligerent Powers. The judgment of the International Court, therefore, might be obtained upon the effect of any rule of the Declaration which affects a neutral ship or neutral cargo.

CHAPTER I.

BLOCKADE IN TIME OF WAR.

BLOCKADE is defined in the English Memorandum which was presented to the London Conference as "an act of war carried out by the warships of a belligerent detailed to prevent access to or departure from a defined part of the enemy's coast." It is the most serious interference with a neutral's trade which a belligerent can make; for by declaring a blockade he prohibits the neutral not only from carrying to the blockaded territory goods useful for purposes of war, but from doing any trade or having any communication whatsoever with the enemy. It is a form of maritime siege operation. The belligerent enforces his prohibition by confiscating any neutral vessels caught in an attempt to break the blockade; but at the same time blockade-running is not an illegal trade by the law of the neutral State (cf. *The Helen*, L. R., A. & E. 1).

The heading of this chapter indicates that its rules do not affect what is known as Pacific Blockade, which is a measure resorted to in extreme cases by the greater Powers to enforce their claims against weaker States who refuse to carry out their obligations. This procedure, though it has many of the characteristics of a regular blockade, is not regarded as an act of war, unless the State affected chooses so to treat it, in which case the rules of the Declaration might apply.

Article 1.—A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

A blockade, being exclusively a warlike act, cannot be made to extend to any part of the coast which belongs to a neutral Power, even though there may be ready means of access from

that neutral territory to the enemy country. The rule is explicitly laid down in Article 18, and follows the recognized practice. Thus during the American Civil War the Federal Government terminated its blockade of the Southern Coast at a halfway line drawn across the mouth of the Rio Grande, because the middle of the stream formed the boundary between the United States and Mexico, and there was a Mexican port within the estuary to which access could not be prohibited. Again, in 1870, the French blockaded the Prussian, but not the Hanoverian, shore of the Ems, because they regarded Hanover as a neutral in their war with Prussia. It was laid down, moreover, by Lord Stowell in the case of *The Stert* (4 Rob. Adm., p. 65) that ships carrying goods brought from a blockaded port by means of interior canal navigation to a neutral port which was open were not liable to seizure for breach of blockade. Thus if England were blockading the German coast, our cruisers could not seize neutral vessels bringing innocent merchandise to or from German ports through the Scheldt. Absolute contraband, however, would be seized in virtue of the doctrine of Continuous Voyage (see Article 30, p. 62).

Territory occupied by the enemy is, however, regarded as enemy country, and therefore a blockade of such territory, or of a neutral port occupied by enemy forces, is permissible. Thus the Japanese notified a blockade of the Manchurian coast which was occupied by the Russian troops during the first period of the Russo-Japanese War. And in the Spanish-American War an English vessel chartered by a Spanish subject was condemned after being captured in an attempt to reach Guantanamo, a port in Southern Cuba, the American naval commander having ordered the investment of all the ports of Southern Cuba (*The Adula*, 176 U. S. 361). At the time of the capture, though the port was occupied by the Americans, the city was still in Spanish occupation.

Article 2.—In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

Article 3.—The question whether a blockade is effective is a question of fact.

Article 4.—A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

Article 2 merely repeats the rule laid down in the Declaration of Paris, 1856, which has been followed by all civilized nations during the wars of the last half century. During the Napoleonic wars, France proclaimed a blockade of all the English coasts, and England retaliated by proclaiming a blockade of all the ports and coastline subject to French rule. These "paper blockades," which exposed neutrals to capture for any trading whatever with the belligerents, were a gross extension of belligerent rights; and the rule of the Declaration of Paris was designed to prevent their recurrence. The rule does not mean that there must be a stationary force of ships to maintain the blockade, or that the blockade is terminated if a single vessel succeeds in evading it; but it requires that a sufficient belligerent force must be stationed in the vicinity of the blockaded port or coast as to make access to it or egress from it hazardous. The presence of a few cruisers near the coast, which from time to time intercept neutral vessels, is not sufficient to constitute an effective blockade; and a neutral Government might object to captures made under such a pretext, and demand reparation. A blockade need not be exclusively maintained, however, by ships; entrances to waterways may be closed by sunken hulls or by fixed mines which supplement the work of the fleet. The Hague Convention, indeed, of 1907 (No. VIII., Articles 1 and 2) forbids the laying of automatic contact mines off the coasts and ports of the enemy with the *sole* object of intercepting commercial navigation. But it is submitted that a naval port, or a port of the enemy in which belligerent ships are lying, or to which they might flee for refuge would not come under this prohibition, so that mines might be employed to assist the blockade of such places by cruisers.

Article 3 provides that the effectiveness of a blockade depends upon the particular circumstances of the case. Several foreign Powers have in the past maintained that the blockading vessels

must be stationed within a certain distance from each other, but the British position which is adopted by the Declaration is that a blockade is good, if in fact ingress to and egress from the place are made dangerous. It depends entirely on geographical conditions : in one case a single ship might be sufficient to blockade a port effectively ; in another a whole fleet may be required.

Article 4 likewise confirms English usage. A blockade must be continuously maintained, but accidental interruption by stress of weather does not break it. It follows that a neutral vessel which seeks to make the closed port or territory during such interruption does so at its peril, and if captured will be liable to condemnation for violating the blockade. That is the rule laid down by Lord Stowell in *The Hoffnung* (6 C. Rob. 112). It is otherwise when the blockading squadron is temporarily driven off by superior force. Then the blockade is raised, and must be declared anew to be binding. In the one case the neutral merchant is, in the other he is not, bound to consider that the blockade will be resumed.

Article 5.—A blockade must be applied impartially to the ships of all nations.

This article is in accord with the English rule laid down in the case of *The Francisca* (10 Moo. P. C. 37), where it was held that, the British commander having proclaimed a blockade of Russian ports on the Baltic, but the British Government having granted Russian ships a period of grace to discharge their cargoes, a Danish vessel captured during this period of grace for a breach of blockade of the Port of Riga should be restored. A belligerent may not prohibit a neutral from carrying on innocent trade with an enemy country except on the ground that he is endeavouring to secure absolute non-communication, with which the neutral trade would interfere. He must, therefore, exclude all ships whatsoever, including his own merchantmen, from the blockaded area : cf. *The Frederick Moltke* (1 Rob. 87), *The Success* (1 Dods. 134) ; and licences to particular persons to trade with the blockaded place, such as used to be given during the Napoleonic wars, will henceforth be illegal. He may not favour one neutral at the expense of others, or his own merchant marine at the expense of neutrals.

But a blockading force may allow particular articles to be exported from the blockaded area, if such a step is advantageous to its own interests. Thus England and France in 1866 allowed the export of cereals from the Danube during the blockade of that river, cf. *The Gerasimo* (1 Moo. P. C. 86).

Article 6.—The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

Article 7.—In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

The first rule obviously refers to a neutral warship. A warship represents the sovereignty of its State, and is, therefore, in a different position from a merchantman. A neutral State is in friendly relations with both belligerents, and there may be circumstances in which it will desire to communicate either with the authorities or with its own subjects in the country whose coasts or ports are blockaded. It may, for example, desire to remove away its subjects from the beleaguered place; and in such a case the blockading force may, if it chooses to do so, relax its prohibition of ingress and egress so as not to offend a friendly Power. But the article makes it clear that such relaxation is to be regarded as a privilege and not as a matter of right, so that in particular circumstances the blockading force might refuse permission to a neutral man-of-war either to enter or to leave the place where ingress or egress would prejudice the success of the operations.

The second rule is a dictate of common humanity. The captain of the neutral vessel seeking shelter must convince the officer of the blockading force of the urgency of his need, and will be subject to examination both on entering and leaving the port. If it should appear that cargo has been either discharged or shipped at the port, the neutral vessel will forfeit the

indulgence accorded to it and be liable to condemnation :
cf. *The Hiawatha* (Blatchford's P. C. 15).

Article 8.—A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

Article 9.—A Declaration of Blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies :—

- (1) The date when the blockade begins ;
- (2) The geographical limits of the coastline under blockade ;
- (3) The period within which neutral vessels may come out.

Article 10.—If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars which, in accordance with Article 9 (1) and (2), must be inserted in the Declaration of Blockade, the declaration is void, and a new Declaration is necessary in order to make the blockade operative.

Article 11.—A Declaration of Blockade is notified :—

- (1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it ;
- (2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

These articles deal with the procedure which is necessary to render a blockade binding on the subjects of neutral Powers, and with the consequences of not complying with the procedure. In some respects they increase the obligations of the belligerent to give notice beyond what is required by the existing English usage. But the ease and rapidity of communication by wireless telegraphy and cable render it feasible in present circumstances to declare and notify a blockade in all cases; whereas in the old days, when slow-going sailing vessels were the only means of communication, it was often difficult to convey notice of a blockade to the neutral Powers concerned, and belligerents were therefore justified in adopting a less stringent procedure of notification, *i.e.* of publishing the proclamation of a blockade to the neutral Powers. The procedure prescribed in these articles requires two steps to be taken to legalize a blockade: (1) Declaration, which is the act of the competent authority (the belligerent Government or its naval commander) stating that a blockade is or is about to be established; (2) Notification, which is the act of bringing the Declaration to the knowledge of neutral Powers and the local authorities.

The duty of the belligerent to declare a blockade is established by general international usage; but English practice in the past has recognized a blockade *de facto*, constituted merely by the fact of investment without any public notification: cf. *The Mercurius* (1 C. Rob. 82), *The Rolla* (6 C. Rob. 364), and *The Adula* (176 U. S. 361). Such *de facto* blockades cannot henceforth be enforced unless the commander of the blockading force issues a Declaration which is notified to the neutral Powers and the local authorities according to Article 11. By Articles 9 and 10, the Declaration of Blockade must state the date when the blockade begins and the limits of the area over which it extends; and an attempt to capture vessels for breach of blockade before the date fixed, or for trying to make a port outside the area specified, will invalidate not only the capture but the whole Blockade, and makes it necessary to issue an amended declaration before the blockade is operative. International usage has come to recognize the obligation of the blockading force to give neutral vessels within the blockaded area, at its commencement, an opportunity of leaving within a fixed period. It is for the blockading Power or its

naval authorities to fix the period within which neutral (or if it chooses also, enemy) vessels may come out. The usual period allowed is fifteen days, but the proclamation of President McKinley at the opening of the Spanish American War of April 22, 1908, allowed thirty days. During this period of grace, vessels may issue freely in ballast or with a cargo *bonâ-fide* bought and shipped before the commencement of the blockade, but they may not load fresh cargo: cf. *The Vrouw Judith* (1 C. Rob. 150). It appears that the curtailment of the indulgence by the blockading force, in face of its own Declaration, will not have the effect of invalidating the blockade. Thus it might first allow fifteen days, and later cut the period down to ten days. The indulgence, however, is no longer treated as a matter of grace, since it is provided in the second part of Article 16, that if through the negligence of the officer commanding the blockading force no Declaration of Blockade has been notified to the local authorities, or if in the Declaration as notified no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free. The blockading Power must, therefore, in future give neutral vessels some opportunity of getting away from the beleaguered place, but their option in respect of the time allowed is not interfered with.

Notification, as well as Declaration of Blockade, is now rendered compulsory on belligerents; and the notification involves two steps: (1) The blockading Power officially informs the Governments of all neutral Powers or their diplomatic representatives of the Declaration; (2) the officer commanding the blockading force informs the local authorities, who will in turn inform the consular officers of the neutral Powers at the port or in the area involved. Subject to the provisions of Articles 15 and 16, this notification is deemed to give notice of the blockade to all neutral ships and merchants, and to make them liable for any breach of blockade attempted subsequently.

Article 12.—The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

When a blockade has been raised, because the blockading force has been driven off temporarily by a hostile force or has been withdrawn for any purpose, it can only be re-established by a fresh declaration and notification issued to all neutrals in accordance with the provisions of Articles 9, 10 and 11. The same rule applies where a blockade is extended beyond its original limits.

Article 13.—The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

This provision is in accordance with the dictates of justice, and was approved by the American Supreme Court in the case of *The Circassian* (2 Wall. 135). If the blockade is raised because the blockading force is driven off by the enemy, it is for the successful adversary to publish the news.

Article 14.—The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

Article 15.—Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

Article 16.—If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's log-book, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

These Articles adopt in the main the Anglo-Saxon practice, which has presumed notice of the blockade in general against the neutral merchant when information had been given to his State. The French practice, which has been followed by a number of Continental States, has required, on the other hand, direct information to be given to a neutral vessel by an officer of the blockading squadron before the vessel could be condemned. Great Britain and the United States have maintained that knowledge of the blockade must be presumed in the neutral shipmaster when the blockade has either been notified to his State, or has become notorious. It has been open, however, to the neutral to prove that he, in fact, had and could have no knowledge of it (cf. *The Adelaide*, 2 Rob. 111 n.; *The Franciska*, 10 Moo. P. C. 37; *The Adula*, 175 U. S. 361). The new rules of the Declaration provide that when the neutral shipmaster satisfies the officer of the blockading squadron, who stops him, that he has no knowledge of the blockade, either because he left port before notification had been made, or because, in fact, notice had not been brought home to him, he is to receive a special notification which must be entered on his log-book. Any attempt to make the blockaded area after this notification will subject the vessel to condemnation. Under the old rules it has been held that permission to enter a blockaded harbour, given by a subordinate official of the blockading squadron, was invalid (cf. *The Hope*, 1 Dods. 226; *The Beneto Estenger*, 8 Cr. 568). The entry on the log which is now prescribed will prevent hardships of this case arising, for the special notification will state the exact area to which ingress is prohibited.

The effect of the second paragraph of Article 16 is to modify the old British rule which held that a neutral vessel in a blockaded

port was presumed to have notice of the blockade as soon as it commenced (cf. *The Vrouw Judith*, 1 C. Rob. 150, and *The Prize Cases*, 1862, 2 Black, 635). To-day a blockade may be maintained by vessels at a considerable distance from the coast ; and, therefore, notification of the blockade must be given to the local authorities in order that they may communicate the prohibition of egress to the vessels in the port. And it is reasonable that the same respite should be given to neutral vessels seeking egress from, as to those seeking ingress to, the beleaguered place, if, in fact, the blockade has not been brought to their notice.

Article 17.—Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

Article 20.—A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

These Articles introduce a considerable modification of the English law if not of English practice, and they may be considered as the concession made by our representatives to Continental Powers in return for their adoption of our rules as to presumption of notice. The rule of English Prize Law has been that a vessel is subject to capture for breach of blockade at any time after leaving port during a continuous voyage to the blockaded place ; but it was noted in the Instructions to our delegates at the Conference that no instance could be found of the condemnation of a vessel, except when captured while actually close to, or directly approaching the blockaded port or coast. Moreover, there was, according to the old English law, a presumption that the vessel had an innocent intention, if the ship's papers and the evidence of the master and crew were consistent with any alternative destination, or an intention to enquire at some other

port not near the blockaded port, as to the continuance of the blockade (cf. *The Columbia*, 1 C. Rob. 154; *The Haabet*, 6 C. Rob. 54). Our concession therefore is rather apparent than real; for a blockade-runner, in almost every case on embarking for a distant blockaded port, would have its papers made out to some intermediate neutral port, so as to avoid the risk of capture during the early part of the voyage. The zone within which capture is allowed by the Declaration, "the area of the operations of the warships," may cover a vast extent of sea or may be quite small; it depends entirely on the circumstances of the particular blockade and the number of ships engaged in it. Thus Washington, it is said, "might be blockaded by a few warships cruising between Cape Charles and Cape Henry, whereas New York would require cordon after cordon of vessels stretching far out into the Atlantic" (Lawrence, p. 698). It is only when the neutral vessel approaches the zones covered by these cordons that she becomes liable to capture. But if the neutral vessel has come out of the blockaded place, either after having run the blockade or not, or if she has attempted to enter it, and is being pursued by a ship of the blockading force, she may be captured anywhere on the high seas, provided that the pursuit is continuous. It is stated in the Report attached to the Declaration that the blockade-runner will not obtain immunity by taking refuge in a neutral port, so long as the pursuer lies in waiting. Provided the belligerent's pursuit is not abandoned, the blockade-runner may be captured after leaving the temporary refuge, or at any time prior to its reaching its home port.

Article 18.—The blockading forces must not bar access to neutral ports or coasts.

Cf. notes to Article 1. The rule follows existing international usage. Neutral ports or coasts would not be held to include such as were occupied by the enemy.

Article 19.—Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

This article rejects the application of the doctrine of Continuous Voyage to blockade, in accordance with the position which England has maintained. During the American Civil War several English vessels were condemned by the United States Prize Courts, though bound for neutral ports in the vicinity of the blockaded coast, on the ground that they or their cargoes were ultimately destined for the Southern ports (cf. *The Peterhoff*, 5 Wall. 28; *The Stephen Hart*, Blatch, P. C. 387; *The Bermuda*, 3 Wall. 514; and *The Springbok*, 5 Wall. 1). The chief English and Continental publicists have condemned this American innovation, and now it is expressly repudiated. The offence of blockade is primarily in the vessel, and unless the vessel is captured in attempting a breach of the belligerents' prohibition, the probable destination of its cargo ought not to affect the vessel, subject only to the consideration that such part of the cargo as is absolutely contraband may be condemned. By the Declaration the doctrine of continuous voyage is applied to absolute contraband (see Article 30), and if the contraband constitutes more than half of the cargo, then the vessel likewise may be condemned, though professedly bound for a neutral port (Article 40). If, however, the cargo is either conditional contraband or innocent, then neither goods nor vessel can be condemned so long as they are bound for a neutral port, because the doctrine of continuous voyage applies neither to conditional contraband nor blockade. The belligerent must wait till the voyage to the blockaded coast has actually begun before he makes his seizure. But it is provided in the Report attached to the Declaration that if the cruiser can prove that the destination to an unblockaded or neutral port is only apparent or fraudulent, and that in reality the immediate destination of the vessel is a blockaded port, then capture may take place. Such proof might be given either by the ship's papers or the bills of lading, or by the course of the vessel when stopped. The existing English practice is to the same effect: cf. *The Steen Belle* and *The Union* (Spinks, P.C. 161 and 164).

Article 21.—A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither

knew nor could have known of the intention to break the blockade.

According to the present British Prize Law, intention to break the blockade is irrebuttably presumed against the owners of the cargo or their agents, if knowledge of the blockade was, or might have been, known to them at the time of the shipment. Cf. *The Panaghia Rhomba Case* (12 Moo. P.C. 168), where it was said, "The owners of the cargo are concluded by the illegal act of the master of the vessel, though it may have been done without their privity, and even contrary to their wishes." This was an extension of the rule approved by Lord Stowell, who said that the conduct of the ship would affect the cargo, if it was proved that the owners of the cargo were or might have been cognizant of the blockade before they sent their cargo. The Declaration leaves the burden of proof of innocent destination upon the cargo-owner, but makes it possible for him to prove that he did not intend to run the blockade. Naturally proof of this will be difficult, and almost impossible, except in cases where the shipper could not have known of the existence of the blockade, as, for example, in a case where the blockade was declared and notified after the vessel had started its voyage from the shipper's country, but before it left a port for the blockaded coast. In such a case it is only equitable that the shipper, if he can prove his innocence, should not suffer the loss of his cargo. By English law the owners could recover against the master in respect of his barratry, if he secretly agreed to run the blockade and concealed the fact from them.

Summing up the effect of the code of the law of Blockade which is contained in the Declaration, it is submitted that it makes blockade less oppressive to neutrals without making it less efficacious for belligerents. It ensures due notice to all neutral Powers of the existence and extent of the blockade, and reduces interference with neutral trade on the suspicion of blockade-running at a distance from the beleaguered coast; but it preserves the stringency of the British rules in the area of the blockading operations, and imputes notice of the prohibition of communication to the individual trader, as soon as he has had the opportunity of knowledge.

CHAPTER II.

CONTRABAND OF WAR.

CONTRABAND is defined in the British Memorandum on International Maritime Law prepared for the London Naval Conference as "neutral property on board ship on the high seas or in the territorial waters of either belligerent which (1) is by nature capable of being able to assist in, and (2) is on its way to assist in the naval or military operations of the enemy." Thus there are two distinct elements in determining the contraband character of goods: the nature of the goods, and their destination at the time they are stopped by a belligerent cruiser; and it is only when the two elements come within the English definition that belligerent capture is permissible. Neutral traders have in war a right of trading in all things with other neutral countries, and with belligerent countries in all things save contraband goods, subject only to their exclusion from any part of the coast or any port of one belligerent which is blockaded by the other. Their vessels, it is true, are subject to the search of the belligerent cruisers at any part of the high seas, in order that the belligerent may ascertain whether the cargo is innocent or not; but unless both its nature and its destination indicate that it is contraband, the vessel cannot be captured, but must be allowed to proceed on its way.

Article 22.—The following articles may, without notice,* be treated as contraband of war, under the name of absolute contraband:—

* In view of the difficulty of finding an exact equivalent in English for the expression "de plein droit," it has been decided to translate it by the words "without notice," which represent the meaning attached to it by the draftsman, as appears from the General Report.

- (1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
- (2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
- (3) Powder and explosives specially prepared for use in war.
- (4) Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.
- (5) Clothing and equipment of a distinctively military character.
- (6) All kinds of harness of a distinctively military character.
- (7) Saddle, draught, and pack animals suitable for use in war.
- (8) Articles of camp equipment, and their distinctive component parts.
- (9) Armour plates.
- (10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
- (11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

Articles 22, 24, and 28 deal with the nature of goods in its relation to the topic of contraband ; Articles 30-36 with their destination.

The Declaration adopts the division of articles of trade during

war into three classes : (1) Articles exclusively or primarily used for war ; (2) articles susceptible of use in war as well as for purposes of peace, and (3) articles which are not susceptible of use in war. The first are known as absolute contraband ; the second as conditional contraband ; the third cannot be treated as contraband at all. The division is that laid down in the seventeenth century by Grotius, the founder of the Science of International Law, and recognized consistently by English practice. On the other hand, several Continental Powers have maintained that there are only two classes of goods, contraband and non-contraband, and have refused to admit the existence of an intermediate class of goods susceptible of use in peace as well as in war. Acting upon this principle, they have at the outbreak of war included in the list of articles which they have declared contraband many things which are required by the civil population as well as by the military authorities and the Government, such as food-stuffs, forage and fuel, and railway material. Their practice has borne hardly upon neutrals, whose trade in these articles with the belligerent has been absolutely prohibited. The more reasonable British practice, which is now adopted by the Declaration, is to regard such ambiguous cargoes as contraband only when they have a particular destination which indicates or suggests that they are meant for the use of the belligerent Government or the armed forces, and to restrict the absolute prohibition of neutral trade with a belligerent to those articles which by their very nature are useful solely or primarily in war.

Hitherto it has been necessary for a belligerent Power to issue a list to neutral Governments at the beginning of the war, enumerating the articles which it will treat as contraband ; and at times neutrals have taken exception to certain items in these lists, as when France placed rice in the list of absolute contraband during her war with China in 1886, and Russia placed cotton and coal in the list after the outbreak of the war with Japan. The Declaration proposes a list of articles which may be treated by a belligerent as contraband the moment war breaks out, without giving any notice to neutrals. The list corresponds with that drawn up by the representatives of the Powers at the second Hague Peace Conference of 1907, when, however, no final agreement on the subject of contraband was attained. The only item

open to question is No. 7, "Saddle, draught, and pack animals." This would include all horses and mules; and it has at times been objected that such animals should not in all circumstances be treated as contraband. The probability, however, that horses and mules imported during war time will be requisitioned by the Government authorities is so strong that the prohibition of the neutral's trade in them is not unreasonable. The gain which the existence of a definite list gives to neutral merchants is very great. He will now know, if the Declaration is ratified, exactly what trade with either belligerent is open to him without risk, and what is closed during war; and the doubts which have hitherto caused serious trouble to shippers and underwriters are removed.

The sending out of warships and their equipment when we are neutral to a belligerent country, or the traffic in arms on a large scale, or the despatch of colliers to a belligerent fleet, or a naval port of a belligerent, is not only prohibited by the other belligerent, but is forbidden by the English Foreign Enlistment Act, 1870, which makes it an offence for any person to prepare or fit out any naval or military expedition here to proceed against the dominion of any friendly State, and forfeits the ship and arms used in or forming part of the expedition to the Crown. In other cases of contraband trading, however, the traffic is not illegal by our law, and contracts affecting it will be upheld by our Courts (*cf. Ex parte Chavasse*, 34 L. J. Bankruptcy, 17). It is true the neutral Sovereign regularly issues a proclamation at the outbreak of war, warning his subjects against contraband trading, but this proclamation has no validity in restraining the trade, which remains a legal venture, subject only to the risks of belligerent capture.

Article 23.—Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

Provision is here made for adding to the list of absolute contraband articles which may hereafter prove to be useful only for war purposes. Particular kinds of airships and their parts, or other scientific inventions might form such a class ; but it is clear that things which are included in Article 24 could not be introduced into the list of absolute contraband, as it is a condition of any addition that it must be of things *exclusively* used for war. Additions to the list may be declared and notified to the Powers at any time, but if made after the outbreak of war the other belligerent will, of course, not be entitled to notification. And, by Article 43, the neutral merchant cannot be made to suffer for carrying on the trade in articles added to the list of contraband by the belligerent, till the declaration and notification have been made. The Powers notified may represent that the addition is not reasonable, and may possibly refuse to be bound by the belligerent's declaration, in which case it would be for the International Prize Court in the end to determine its justification. It has been suggested that it would have been better to require all the Signatories to accede to the addition to the list before it came into force, or to submit proposed changes to the Hague Conference. Such a procedure would certainly have been more legal, but in case of a new invention of great efficacy in war it would have been an unfair hardship on the belligerent to restrain him from treating it as contraband until such assent could be obtained. As, however, the three lists drawn up at the London Conference classify practically all regular articles of commerce, little room is left for any dangerous innovation by a belligerent.

Article 30.—Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

Article 31.—Proof of the destination specified in Article 30 is complete in the following cases :—

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
- (2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

Articles 30 and 31 declare the destination which is required to bring the cargoes that come within Article 22, under the belligerent's right of capture. In effect, articles which are in the list of absolute contraband are liable to capture if destined for the enemy's country or the enemy's forces at any place. It is the destination of the goods, not of the vessel, which is decisive. The Declaration applies to the class of absolute contraband the doctrine of what is called "Continuous Voyage," which is an innovation of the last fifty years in the law of contraband. The effect of the doctrine is that goods may be condemned as contraband, though the vessel on which they are found is destined apparently to a neutral port, if from the documents referring to the goods or other circumstances the captor gathers that they are ultimately destined for the enemy country or the enemy forces. The old British doctrine laid down by Lord Stowell in *The Imina* (3 C. Rob. 168), was that "goods going to a neutral port cannot come under the description of contraband. . . . The articles must be taken *in delicto*, in the actual prosecution of the voyage to an enemy's port," and, therefore, if the vessel was bound to a neutral port, however great the suspicion that its cargo would be transhipped or carried overland to the enemy's country, it could not, according to the old doctrine, be captured.

The development of railway communication, however, in the nineteenth century, which made it easy for a neutral to supply a belligerent with munitions of war by combined sea and land carriage, led to the introduction into the law of contraband of a rule which had earlier been applied by the British Prize Courts to cases of so-called Colonial trade. During the Napoleonic Wars the

British authorities prohibited neutrals from engaging in the trade between Spanish and French colonies and the mother countries, on the ground that during times of peace this trade was closed to them by France and Spain, and they were not entitled to reap the benefit of our measures against the enemy's mercantile marine. And our Prize Courts condemned cargoes coming from these colonies on neutral vessels which were nominally destined for a neutral port, when there was evidence that they were subsequently to be transhipped or transported further on the same ship to the enemy country. The doctrine affirmed was that if there was a single mercantile transaction involving the carriage of prohibited goods to the enemy, the belligerent could seize the vessel at any part of the transaction and condemn the goods. The United States adopted this rule for contraband trading in the Civil War, and Great Britain, which had up to that time tended to oppose it, saw the use and reason of during the Boer War. One of our cruisers held up the German liner *The Bundesrath*, which was bound for Delagoa Bay, on the ground that her cargo was contraband and was destined for the Boers, but in view of the protests of the German Government we eventually released the vessel, and subsequently several others which were captured in the same circumstances.

The Declaration has now affirmed the doctrine in regard to absolute contraband, and defined in Article 31 the circumstances in which the hostile destination may be regarded as proved. Usually the onus of proving contraband character or destination is on the captor, but in the cases specified the proof of the hostile destination is deemed complete without more. If the goods are documented for the enemy's forces, then, though the destination of the vessel is a neutral port, it may be captured; and, again, though the goods are documented for a neutral port, yet if the vessel is to touch at an enemy port or at a place where the enemy's military or naval forces are gathered, it may be captured. For the inference that the goods which are capable only of warlike use are in such circumstances destined in fact for the enemy is so strong that the belligerent may act upon it. The rule cannot be regarded as too severe, in view of the belligerent's right to prevent munitions of war reaching his adversary; and the neutral in future will know the risk which he

runs in carrying a cargo containing articles of absolute contraband, if during the voyage he is to touch at a port of a belligerent country.

Article 32.—Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

The Report annexed to the Declaration explains that this article is “not to be interpreted too literally. For that would make all frauds easy. A search of the vessel may reveal facts which irrefutably prove that her destination is the place where her goods are to be discharged is incorrectly entered in her ship’s papers, and the commander of the cruiser is then free to judge of the circumstances, and capture the vessel or not according to his judgment. To sum up; the ship’s papers are proof, unless facts show their evidence to be false.” In the light of this reservation, it may be taken that the ship’s papers are not evidence either when they are found to be false, simulated or deceptive, or the ship is found out of the course indicated by them.

Article 24.—The following articles, susceptible of use in war as well as for purposes of peace, may without notice be treated as contraband of war, under the name of conditional contraband :—

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes suitable for use in war.
- (4) Gold and silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.

- (6) Vessels, craft, and boats of all kinds ; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connexion with balloons and flying machines.
- (9) Fuel ; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

This article which, together with Articles 33-36, defines Conditional Contraband, has given rise to the most serious opposition to the Declaration in this country. The root of the objection is to the inclusion of food-stuffs in the list, which, it is said, will have the effect of endangering our food supply in time of war. It must be remembered, however, that the Declaration in this respect merely recognizes existing rules. Not only have many foreign Powers regularly treated food-stuffs as contraband—some of them as absolute contraband, *e.g.* Russia in the Russo-Japanese War, and France in the Chinese War, 1886—but our Manual of Prize Law declares provisions and liquors destined for the enemy's naval ports and armed forces to be contraband, and our Prize Courts have regularly condemned cargoes of food destined for the military or naval forces of the enemy (*cf.* *The Jonge Marghareta*, 1 C. Rob. 108 ; *The Frau Marghareta*, 6 C. Rob. 92 ; *The Ranger*,

ib. 125 (ship's biscuit condemned)). The American Prize Courts have followed the same usage. Cf. *The Commercen* (1 Wheaton, 382), where a cargo of barley and oats going to a port occupied by the enemy's forces was condemned. Jurists, it is true, both in this and foreign countries, have protested against the retention of a class of conditional contraband—and the Institute of International Law passed a resolution to that effect in 1896—but belligerent practice has been consistently against them; and it is not to be expected that a naval power, if it can prevent it, will allow its enemy to receive supplies of food and forage, fuel and railway material and other stores for its forces from neutrals, while a military power still regularly prevents the carriage by land of such things into the enemy's country which it has occupied, and requisitions them from the inhabitants for its own forces.

Those who denounce the inclusion of food-stuffs in the list as an act of national destruction should consider what would be our position if there were no Declaration of London and we were at war. Our enemy would be certain to declare food-stuffs, at any rate, conditional contraband, and clearly no amount of protest by us would shake him in the least. It is the neutral countries whose traders are affected who alone can make a protest against an excessive belligerent claim. But in view of the well-established international usage to declare food-stuffs destined for the enemy's forces as contraband, neutrals would not be likely to raise a protest at all against such action, and certainly would not go to war over it. If our enemy should go further, and declare food for this country to be absolute contraband, then a friendly neutral might protest, perhaps, and threaten war unless the absolute prohibition were removed; but it is by no means certain that he would take this step. Our position under the Declaration, then, if we were at war, has this advantage, that our enemy could not declare food-stuffs absolute contraband, and in order to capture food-stuffs on neutral ships at all, he would have to show that they had the destination specified in Articles 33–35. That is to say, all cargoes of food-stuffs on neutral ships shipped to this country via neutral ports would be immune from capture, except on their journey between the neighbouring neutral port and the final destination; and, further, all such cargoes shipped directly to this country would be immune from capture unless they fell within one of the presumptions

specified in Article 34. In admitting food-stuffs, therefore, into the list of conditional contraband, England is merely acting upon her own traditional practice and recognizing necessary facts, and at the same time she is, to an extent, protecting her supplies in time of war, by fixing the conditions under which they would be open to capture, a point hitherto indefinite.

The list of conditional contraband in itself, then, is unexceptionable; it is drawn up in accordance with well-recognized belligerent rights, and it has this advantage for neutrals that, like the list of absolute contraband, it provides certainty in the place of the present uncertainty.

It is explained in the Report commenting on this article that paper money includes only inconvertible paper money and bank-notes which may or may not be legal tender, and not bills of exchange and cheques. Engines and boilers are included in Class (6).

Article 25.—Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

Additions may be made to the list of conditional contraband, but none of the things specified in Article 28, the Free List, can be introduced into this class of conditional contraband; so that here again, as with the classes of absolute contraband, the belligerent's power of innovation is very narrowly restricted. And the remarks made in the note to Article 23, p. 62, as to the binding effect of additions notified to neutrals will apply equally to the class of conditional contraband.

Article 26.—If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24 such intention shall be announced by a declaration, which must be notified

in the manner provided for in the second paragraph of Article 23.

It is open to any Power, out of consideration for neutrals, or other reasons, to waive its right of treating either as absolute or conditional contraband any article in the two lists ; or presumably it might choose to treat as conditional contraband what the Declaration entitles it to consider as absolute. In any of these cases it must notify its intention, so that the neutral may have certainty as to what is illicit trade.

Article 33.—Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

Article 34.—The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

Article 33 lays down the general principle for the destination of conditional contraband required to make it liable to capture ; and Article 34 establishes certain presumptions as to such destination which a captor may act upon, but which it is open to the neutral shipowner to rebut if he can. The rules as to hostile destination for conditional contraband differ in two respects from those for absolute contraband. The destination must be for the use of the armed forces of the enemy—not for the enemy country in general ; and the doctrine of continuous voyage is excluded, so that only the immediate destination of the vessel carrying the contraband may be considered, except in the special case provided for in Article 36.

The general principle of Article 33, at least in its application to food-stuffs, is somewhat in extension of the existing practice of Great Britain, according to which provisions in neutral ships may be intercepted by a belligerent as contraband only when, being suitable for the purpose, they are on their way to a port of naval or military equipment belonging to the enemy, or occupied by the enemy's naval or military forces, or to the enemy's ships at sea ; or when they are destined for the relief of a port besieged by such belligerent (Professor Holland in Report of Commission on Food Supply in Times of War, p. 28). And according to Lord Stowell the nature and quality of the port to which the articles of conditional contraband are going is the fairest test of their liability to capture (cf. *The Jonge Margharetta*, 1 C. Rob. 188). If the port is predominantly one of naval equipment, they may be captured ; if a general commercial port, they may not.

Thus, probable use by the armed forces of the enemy is the existing English criterion for conditional contraband. The article of the Declaration adds to this test probable use by a Government Department of the enemy State. The extension is upheld in the Report by the argument that " The State is one, though it necessarily acts through different departments. If a Civil Department may freely receive food-stuffs or money, the Department is not the only gainer, but the entire State, including its military administration, gains also, since the general resources of the State are thereby increased." The article would expose to capture food-stuffs consigned in neutral vessels to the Government authorities to relieve distress caused among the poor by the war, as well as all supplies of money sent to the State departments. Money is

expressly excluded from the provision that the goods to be liable to capture must be such as can in fact be used for the purposes of the war in progress.

In the ordinary way, however, neither provisions nor bullion would be sent during war to the authorities of the Civil Government of a belligerent ; but the establishment of the presumptions in Article 34 as to hostile destination might involve in the risk of capture consignments meant for private persons. The goods in Article 24 which might be exempt from capture on the ground that they could not be used for the purposes of the war are such things as food-stuffs, forage, railway stock, or vessels which the special circumstances of the combatants or the special destination might prove to be intended for pacific purposes. Thus cargoes of these articles sent to the Civil Government of a British colony while we were at war would be regarded as exempt from capture, if at the time there was no invasion or threatened invasion of the colony by the enemy. Money, on the other hand, can easily be sent from one part of the world to the other, and so may be seized at any part of the enemy's territories.

The presumptions set up by Article 34 have the effect of shifting the onus of proof which normally lies on the captor to the neutral merchant, who, when one of the destinations prescribed exists, must prove that his goods are not in fact meant for the enemy's forces, but for the civil population or a private individual in the way of ordinary commerce. Where the goods are consigned either to the person or places specified in the article, and are within one of the classes in Article 24, they are presumed to be conditional contraband, and the belligerent cruiser is entitled to capture the vessel carrying them. It will be open, however, to the owner of the cargo to prove before the Prize Court, if he is able, that the goods are in fact meant for the ordinary population, and therefore in spite of their destination are not contraband. In all cases, moreover, where the neutral goods are not consigned either to the places or persons mentioned in the article, they are presumed to be not contraband ; and if the vessel carrying them is detained by the belligerent, the onus will be on the captor to prove that there were special circumstances which indicated an intended hostile use. He will be liable to pay compensation to the parties injured if his capture is not upheld by the

Prize Court (see Article 64). The presumption of innocent destination is rebuttable like that of hostile destination, and a cargo of clothing, for example, consigned to an ordinary commercial port of the enemy country might under certain circumstances be condemned as conditional contraband, if it could be proved by the captor that the consignee was in the habit of supplying the enemy's forces. A merchant vessel which comes within Class (6) of Article 24, and may therefore be conditional contraband, is not, however, subject to the presumption of hostile destination, unless actually consigned to enemy authorities, or to a shipyard which supplies the enemy. The port at which it calls cannot affect its character, which is presumed innocent until there is strong direct evidence to the contrary.

As to the presumptions of hostile destination, the first case, consignment to enemy authorities, agrees with our present practice, and is clearly authorized by the general rule laid down in Article 33. The second case, however, consignment to a contractor or trader (the word in the French text is "commerçant," which certainly has a wider meaning than contractor), established in the enemy country, who as a matter of common knowledge supplies articles of this kind to the enemy, is an innovation, and based, it is said, on an imperfect knowledge of the actual conditions of trade, at least in England. There is to-day no special class of contractors who supply the enemy Government. In times of war the Government requisitions the services of a large number of traders who are usually concerned in general trade, and it would be well-nigh impossible for the captain of a belligerent cruiser to know what merchants are to be included in the class of notorious suppliers to the Government. Hence it is said with some plausibility that a belligerent would be likely to capture any cargo as conditional contraband which was consigned in time of war to any large trader in this country, and would leave it to the owner at the Prize Court to prove an innocent destination. The suggestion, however, which has been made that goods consigned to any contractor who supplies the enemy *people* may be presumed contraband by this rule is absolutely groundless. The context makes it clear that the presumption applies only to a contractor who supplies the enemy Government or authorities, and the limitation is expressly made in the General Report. It

is true the word "ennemi" simply is used in the French, and "enemy" simply in the English, text; and it would have been more exact to repeat "enemy authorities;" but "ennemi" is frequently used for the enemy Government, and it is perfectly clear that it has that narrower sense in this phrase. Further, it may be urged that the belligerent may only presume hostile destination if *as a matter of common knowledge* the consignee supplies the enemy authorities; so that he may not capture the ambiguous cargo on the mere conjecture that the consignee belongs to the class: and neutrals could protest against a seizure made in violation of this condition. Nevertheless it is unfortunate that the phrase was inserted in the article, since in war time the tendency of belligerents is to press all their rights and all presumptions in their favour to the furthest possible extent, and neutrals are not willing to go to war with them except on a gross violation of the laws of war.

So again, while the presumption that the goods are contraband when consigned to a fortified place of the enemy agrees with our existing practice, and is clearly authorized by the general rule, the similar presumption which is set up when the consignment is to any other place serving as a base for the armed forces of the enemy is somewhat loose and vague. Base for the armed forces is an indefinite term which may include a base of supply, and would probably be so interpreted by a desperate belligerent. In that case cargoes for London and Glasgow might be condemned, on the ground respectively that London is a base for Aldershot, and Glasgow a base for Rosyth. The particular wording, then, of this article is not happy, and did it stand alone it might be regarded as exposing our food supply in time of war to greater risks of capture and condemnation than those to which our present prize-law exposes food-stuffs going to our enemy. But apart from the consideration that, if we were at war, not we but our enemy would determine the terms under which conditional contraband coming to this country would be captured, and that the presumptions established by this article indicate the views deliberately held upon the subject by the chief Continental Powers, and would be acted upon by them in case of war, it is submitted that by reason of the provisions in Article 35 any dangerous tendency is more than neutralized, and that the total effect of the rules as to

conditional contraband is to protect food supplies in neutral bottoms, consigned to this country in time of war, more fully than is done by present belligerent usage.

Article 35.—Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

Article 36.—Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

By the first provision the doctrine of continuous voyage is rendered non-applicable to conditional contraband. The rule applied by Lord Stowell to contraband in general (see above, p. 63, note to Article 30) is preserved for this limited division of it; that is to say, the cargo may be seized only if the vessel on which it is carried is actually in the course of a voyage to the enemy country, or to a place occupied by the enemy or its forces, and when the cargo is not consigned to some neutral port at which the vessel will touch before it reaches the enemy country. It appears also from the Report that if the cargo is consigned to a neutral port at which the vessel will touch after leaving the enemy country it cannot be captured as conditional contraband, unless there is something fraudulent in the papers. The only exception to the provision is when the enemy country has no

seaboard, as was the case with the Transvaal during the Boer War. In such a case the belligerent may apply the doctrine of continuous voyage, as provided in Article 30, to a cargo of conditional contraband which has a hostile destination within the meaning of Article 33, *i.e.* which is destined for the armed forces or a Government department of the enemy State. It would be unreasonable to allow the inland enemy to be supplied through a neutral port, which was virtually the regular port of discharge for goods consigned to the enemy country. England accordingly stopped vessels during the Boer War bound for Delagoa Bay. But when the enemy country has ports of its own, the exclusion of the doctrine of continuous voyage from the subject of conditional contraband is justified by reason of the nature of the traffic.

One might judge from the comments of some critics of the Declaration that this limitation of the right to capture conditional contraband was an outrageous curtailment of our belligerent rights. Yet, in fact, we have never effectually exercised the right to capture cargoes on their way to the enemy country *viâ* neutral ports even when they were absolute contraband ; and Lord Stowell explicitly and emphatically repudiated the practice. The Declaration now entitles us to do so in that contingency, but rejects the claim which has been advanced by others to capture cargoes of conditional contraband which are destined to neutral ports. It is submitted that the limitation of the right of capture is both reasonable and to our benefit. Conditional contraband cargoes are *ex-hypothesi* such as might be regularly required by the neutral population, and it would always be possible for the consignor to direct them in the first place to a neutral consignee in the neutral country who might forward them at a favourable opportunity to the belligerent country. And to allow capture upon suspicion that an eventual belligerent destination was intended would be an excessive interference with neutral trade, which would inevitably cause friction. Cargoes of absolute contraband, on the other hand, being of such things as are exclusively valuable in war, would probably find their way, in nine out of ten cases, from a neighbouring neutral to a belligerent country ; and therefore capture is allowed, though their immediate destination is seemingly innocent, when there is evidence that this is not the final destination. The effect of the restriction of capture in

cases of conditional contraband would be, if we were at war, to give immunity to all cargoes of the kind consigned to England *viâ* neutral ports, and to render them liable to capture only during their transit of the narrow seas which separate us from our Continental neighbours, some of whom are in any case likely to be neutral. Hence, while the restriction would diminish our power of capturing conditional contraband destined for a Continental enemy in very exceptional circumstances only, it would regularly benefit us when at war by diminishing his power of interfering with our supplies which must be brought by sea. The present practice of nations has not hitherto definitely accepted the doctrine of Continuous Voyage in its relation to contraband; as has been mentioned, the American Courts put it into force amid protests during the Civil War, and England claimed to enforce it during the Boer War, but did not press her claim because of German opposition to it. The Declaration assures us the benefit of the doctrine as belligerents in regard to absolute contraband, which is the trading by the neutral that more seriously assists in war; and it secures us both as belligerents and neutrals against any attempt by a foreign Power to apply the doctrine to other neutral cargoes.

The second part of Article 35 is to be construed subject to the modification in the Report referred to in the note to Article 32. If the ship's papers are fraudulent, the belligerent may disregard them.

Article 27.—Articles which are not susceptible of use in war may not be declared contraband of war.

Article 28.—The following may not be declared contraband of war:—

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries and yarns of the same.
- (2) Oil seeds and nuts; copra.
- (3) Rubber, resins, gums, and lacs; hops.
- (4) Raw hides and horns, bones, and ivory.

- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs, and bristles.
- (17) Articles of household furniture and decoration ; office furniture and requisites.

Belligerents have regularly recognized that the neutrals' trade with an enemy in certain commodities which are useful for the civil population only, and for peaceful purposes only, cannot be prohibited except in cases of blockade, where they effectually cut off all communication by sea with the whole or with part of the enemy's coast. But the Declaration contains the first attempt to draw up a list of things included in this innocent trade, which cannot be declared contraband. This list, it may be noted, does not include iron and steel, or half manufactured goods of these metals, because such things may be turned to warlike purposes. But it has been calculated that the annual value of British exports and imports under the heads enumerated in the free-list amounts to

over £300,000,000, or nearly one-third the total foreign trade of the country. And the list includes raw cotton which was declared by Russia in 1904 to be absolute contraband. No provision is made in the Declaration for additions to the list, as is done with the lists of absolute and conditional contraband. But possibly an opportunity of inserting fresh heads in the list would be afforded when the Hague Peace Conference from time to time considers the laws of war.

Article 29.—Likewise the following may not be treated as contraband of war :—

- (1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.
- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

This article is a dictate of humanity. One of the Hague Conventions of 1899, amended by the Hague Conference of 1907, secures special privileges for neutral ships engaged in hospital service ; and by this Article of the Declaration medical stores are given a similar privilege. They may be seized only when they are destined for the enemy's country and if the captor is in urgent need of them himself, and then only on payment of proper compensation.

The second part of the Article is equally reasonable. Even though part of the cargo is contraband, yet provisions and nautical instruments and boats which are required for the actual voyage and the use of the vessel captured, or arms intended for the defence of the vessel against pirates and for signals, cannot be involved in the condemnation. For the belligerent's right is to take only what was destined for his enemy, and not whatever may be useful to himself.

Article 37.—A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

Article 38.—A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

These rules are in accordance with the existing British practice. From the moment the vessel leaves a neutral port with a cargo of contraband, she is liable to capture anywhere except in the territorial waters (*i.e.* within three miles of the coast) of a neutral country. By the general principles of the law of neutrality, belligerent capture is not permissible in that zone. But, belligerent cruisers may detain her at any other stage of her outward voyage until she has deposited her contraband cargo. When, however, she has successfully accomplished that act, she is no longer liable to capture, and the belligerent cannot seize her on the return voyage, as he can do with a vessel which has successfully broken blockade outwards. In the case of *The Allanton*, the Russian Prize Court claimed the right to condemn a vessel which was alleged to have deposited a contraband cargo on its outward voyage, and was returning with innocent cargo. But the claim was opposed at the time by England, and the Declaration declares it illegal in the future. Our own Prize Courts in the past claimed the right to condemn on return journey a vessel which had carried contraband on her outward voyage with false or simulated papers (*Nancy*, 3 C. Rob. 122), but the abandonment of this somewhat vindictive practice is not of any importance.

Article 39.—Contraband goods are liable to condemnation.

Contraband is primarily the offence of the goods; and the established practice among nations has been that a belligerent

may deter a neutral from engaging in traffic of the kind by confiscating the goods when he intercepts them. The trade is not illegal as between individuals in the neutral or the enemy country; but the combatant, because of his special need, may penalize it and treat it as a violation of his belligerent law. Great Britain has in the past frequently adopted the mitigation of the strict belligerent right of condemnation in respect of conditional contraband by applying to that class of trade the right of pre-emption, *i.e.* seizing the cargo but paying the neutral owner the fair market price for it. The Declaration makes no provision for pre-emption, save in the cases specified in Articles 29 and 43; but there is, of course, nothing to prevent any belligerent adhering, when it chooses, to a more indulgent practice towards neutrals. The British Courts, too, have recognized that there are cases when the carriage of conditional contraband may properly be visited by confiscation of the cargo. Contraband goods can be condemned only by a properly constituted Prize Court of the belligerent; and till they are so condemned are not the full property of the captor. But when voluntarily given up by the neutral (see Art. 44), they may be destroyed by the captor.

Article 40.—A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

Article 41.—If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

Article 42.—Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

According to existing English Prize Law the ship carrying contraband is subject to condemnation if she has made forcible

resistance to the captor, if she carries false or simulated papers, or if there are other circumstances amounting to fraud, or if she belongs to the owner of the contraband cargo. In other cases the ship is restored after condemnation of the cargo, but no compensation is paid for the loss of freight or time caused by the detention (cf. *The Ringende Jacob*, 1 C. Rob. 92). Other countries, however, have condemned the vessel when the proportion between the noxious and innocent part of the cargo exceeded a certain fraction; in some cases when it was more than half, in others when more than two-thirds, in others, again, when more than three-fourths. The Declaration has established a uniform rule in place of this diversity of practice, according to which the vessel may be condemned whenever the contraband, reckoned either by value or by weight, or by volume, or by freight, forms more than half the cargo. Further, when the vessel cannot be condemned, because the contraband is less than half the cargo by any of these measures, but there are circumstances which incriminate her in the carriage, and suggest knowledge by the master of the nature of her cargo, the shipowner may be condemned to pay the costs of the captor incurred in making and adjudicating upon his prize. The same penalty would presumably be imposed also when the vessel carried fictitious or fraudulent papers. Following the existing practice, innocent goods which belong to the owner of the contraband on board the same vessel may be condemned; but innocent goods belonging to another shipper, even if he be an enemy subject, must be released, though no compensation again is paid to their owner for detention and loss of market. On the whole, the deterrent powers of belligerents against contraband trade have been increased by the Declaration, but not unreasonably; since the gains for carriage of contraband being notoriously large, it is fair to visit knowledge of the noxious character of the cargo on the shipowner when the contraband forms more than half of the goods on board.

Article 43.—If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on

payment of compensation ; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

Up to the moment when war breaks out, the neutral has a perfect right to trade with whomsoever he likes in any kind of commerce, though he is providing the intending combatants with the sinews of war. On the other hand, a belligerent is not willing to let his enemy be supplied by a neutral with a cargo of war material which he intercepts at the outbreak of hostilities. By exercising the right of pre-emption given by this article the belligerent may prevent the cargo from reaching his enemy ; but he may not penalize the trader or the carrier till after they have had due notice of the risk which they will run in supplying articles of a certain quality to the enemy country.

The second part of the Article is analogous to the provision as to the implied knowledge of blockade in a neutral vessel. One of the Hague Conventions of 1907 now compels a belligerent to issue a Declaration of War, and till this is done knowledge of the hostilities is not imputable to neutral Powers and individuals. The declaration of contraband referred to applies only to articles not included in either Article 22 or Article 24, with regard to which no declaration is required. By Articles 23 and 25, when any additions to the list are made, the belligerent must notify

them to neutral Powers ; and till that is done the neutral cannot be penalized for engaging in a trade which he had the right to regard as innocent.

Article 44.—A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the log-book of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

This is another mitigation of the present practice as to capture of contraband, which is called for by the conditions of modern commerce. A neutral passenger liner might be stopped by a belligerent cruiser, and on search might be found to have a small quantity of contraband on board. By the strict rule and the old practice she might be taken into a belligerent port for adjudication ; but such conduct would be extremely vexatious to the neutral passengers on board, and therefore the provision of this Article is a welcome innovation. The captain in such circumstances would probably be willing to hand over the contraband part of the cargo, and thus obtain release for his vessel, while the belligerent would secure what he wanted, and would be saved the trouble of taking a prize into port. The same conduct might, of course, be employed in relation to any vessel on which the contraband was less than half the cargo, and might often be to the benefit of both captors and neutrals. The contraband goods handed over are in such a case properly regarded as the absolute property of the captor, and therefore liable to be

destroyed on the spot; because the neutral master by handing them over has admitted their noxious character. If the master contests their contraband character, he may insist on his vessel and cargo being taken in for adjudication before a Prize Court. The employment of the facilities provided by this Article should counteract to some extent the tendency to sink neutral prizes, which is more directly checked in Chapter IV. of the Declaration. In certain cases the belligerent captor has the right to remove the alleged contraband goods from the neutral vessel when the master is not willing to hand them over (see Article 54), but he acts so at his risk.

CHAPTER III.

UNNEUTRAL SERVICE.

Article 45.—A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband :—

- (1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.
- (2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of

a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

In addition to the prohibition of contraband-trade and blockade-running, a belligerent may forbid neutrals to assist his adversary more directly by transporting any part of his forces or by giving him information about the hostilities. If the neutral goes further than this in the way of doing service for the enemy, the injured belligerent may treat his vessel as if it were actually embodied in the enemy's forces, and may subject it to all the penalties of a captured enemy vessel. This branch of Prize Law, which used to be classed as Analogues of Contraband, is now known as Unneutral Service. There were two instances during the Russo-Japanese War of condemnation for this offence; in one case a German vessel, the *Industrie*, was condemned by the Japanese Prize Court for watching the movements of the Japanese fleet and reporting them to the enemy; in the other, the *Tuangnan*, a vessel flying the French flag, was condemned because she was engaged in reconnoitring defences for the enemy. The distinction between carriage of contraband and unneutral services for purposes of a marine insurance policy was established by Bigham, J., in the case of *Yangtze Insurance Association v. Indemnity Mutual Marine Co.* ([1908], 1 K. B. 210), where he held that transport of military officers of a belligerent state in a neutral ship is not a breach of warranty against contraband trade.

The Declaration divides the offences of this character under two clear and distinct heads, and makes a marked distinction in the penalty for each. Article 45 deals with the less serious infringement of neutral duties; Article 46 with the deliberate violation of them by which the rights of a neutral vessel are altogether forfeited. By Article 45 the vessel is rendered liable to condemnation in two different cases: (1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who form part of the enemy's forces, or with a view to transmit intelligence to the enemy. (2) If to the knowledge of the owner, or the charterer, or the master, though in the course

of a regular and ordinary voyage, she is actually transporting a number of the enemy's forces, or individuals, whether enemy or neutral, who in the course of the voyage directly assist the operations of the enemy by giving information or otherwise. The Article is in a small measure a relaxation of the present English practice, by which a vessel might be condemned for carrying one or two officers of the enemy's forces, though in the course of an ordinary voyage, and though the master and owners of the vessel were ignorant of the military character of the passengers. (Cf. *The Orozambo*, 6 C. Rob. 430.)

The conditions of modern intercourse with our mammoth liners carrying thousands of passengers, and the greater respect which neutrals demand, necessitate some change in the stricter practice of the Napoleonic wars. It would be intolerable to-day that a neutral ocean liner should be liable to condemnation, because a belligerent cruiser found among her passengers one or two persons who were proceeding to the enemy country to join the enemy forces, and who had come aboard without the knowledge of any responsible person, as could very easily be managed. Article 47 gives the belligerent the right of removing from the neutral vessel any individual belonging to the enemy forces; but to inculcate the vessel for such carriage there must be proof of unneutral intention shown by the fact that the voyage was not made in the ordinary course, but was specially undertaken in the enemy's interest. Calling at a port not ordinarily visited by the vessel would, according to the Official Report, be sufficient evidence of a special undertaking.

Enemy despatches sent by the ordinary post are to-day exempt from belligerent interference, since a Convention drawn up at the Hague in 1907 has secured immunity for mail-bags carried on neutral vessels. In the past all letters found on vessels at sea used to be subject to the search of enemy cruisers, but to-day such interference would be intolerable. Hence the transmission of intelligence in the interest of the enemy must mean some more direct service than carrying letters in the ordinary postal arrangements. If the vessel has been specially chartered to carry despatches to or from the enemy country or the enemy forces, or if it uses its wireless telegraph installation for the purpose of giving information to the enemy either of the other belligerent's

movements and disposition, or of the position of his own forces, then it will be liable to condemnation under section 1 of the Article. If the vessel is exclusively engaged in this service, she falls within the provisions and penalties of Article 46; but so long as the unneutral service is carried on in combination with her ordinary functions, she must receive the treatment of an ordinary neutral prize. During the Russo-Japanese War the Russian authorities threatened to sink a neutral vessel (*The Haimun*), engaged by neutral war-correspondents and fitted by them with wireless apparatus, as though it were an enemy vessel, and to treat the correspondents as spies. According to the Declaration, she would have been justified in capturing and condemning the vessel in such circumstances only if it had been proved that the correspondents were not only sending news to their own country, but were communicating intelligence which was valuable to the enemy.

The second case in which the neutral vessel is liable to condemnation is when she is transporting a military detachment of the enemy, which could not be done without the actual knowledge of the owner or master of the ship: or when she is carrying one or more individuals who use the voyage to assist the enemy. This might be done either by their sending wireless messages to the enemy, or by their intercepting or interfering with wireless messages sent by the other belligerent. The use of carrier pigeons for the transmission of information to the enemy during the voyage would no doubt entail the same consequences. Presumably the Article would extend to air-ships as well as sea-going vessels, though the Declaration is expressed to cover only maritime war and maritime capture.

Goods belonging to the owner of a vessel captured for unneutral service are liable to condemnation in the same way as goods belonging to the owner of contraband on board the same vessel. Goods of other owners on board will not be liable to condemnation. (See Article 42 above.) The vessel's liability to capture will cease at the termination of the voyage. (See Article 38.)

The provisions as to notice of hostilities which is required to inculcate the vessel likewise correspond with those which are laid down in respect of contraband trade. (See note to Article 43 above, p. 82.)

The meaning of the phrase, "individuals embodied in the

armed forces of the enemy," is not quite clear. It might upon a strict interpretation by a belligerent be held to include subjects of a belligerent country, resident in a neutral country at the outbreak of hostilities who are summoned to join their country's forces, and who are returning to their country for the purpose, but have not actually joined any corps at the time of the capture. The Report, however, attached to the Declaration indicates that this is not the correct interpretation, and that the phrase only includes those who actually are serving, or who have really joined the corps to which they belong before setting out on the voyage. Passengers returning home, therefore, in obedience to a call for military services by their native country would not incriminate the vessel unless the voyage was exclusively undertaken for their transport; nor, it is submitted, could such individuals be removed from the neutral vessel under the provisions of Article 47. As is pointed out in the Report, it would be difficult to pick out such persons without having resort to vexatious interference, and the desire of a belligerent will be to cause as little vexation as possible to neutrals unless some clear military need is to be served.

Article 46.—A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel :

- (1) If she takes a direct part in the hostilities ;
- (2) If she is under the orders or control of an agent placed on board by the enemy Government ;
- (3) If she is in the exclusive employment of the enemy Government ;
- (4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

The consequence of assimilating the treatment of neutral vessels, committing the more serious breaches of neutral duty specified in this Article, with the treatment of enemy vessels is that—

(1) Not only goods belonging to the owner of the vessel, but all enemy goods found on board, though not contraband, may be confiscated, although when they were shipped the vessel was neutral. For enemy goods may always be captured on enemy merchantmen. Moreover, all goods on board will be presumed to be enemy goods, and the onus will be on the neutral owner to prove them neutral property.

(2) The vessel may be sunk by the captor without being brought in for adjudication by a Prize Court, since the general prohibition to sink prizes in Article 48 of the Declaration applies only to neutral vessels. But unless there is clear proof that the vessel comes within one of the conditions specified in the Article, the captor will be well advised to bring her in for condemnation; otherwise if it prove that his suspicions were not justified, the Government of the neutral owner may recover damages against the belligerent, as the English Government did against the Russian for the sinking of the English trawlers in the North Sea by the Russian Pacific squadron on the unfounded suspicion that they were taking a direct part in the hostilities. The neutral owner may plead before the Prize Court that the allegation made against the vessel is unfounded, and carry an appeal on the matter to the International Prize Court.

As to the four circumstances which are required to attach enemy character to the vessel, the first, taking direct part in the hostilities, would include acting as scout, or giving notice to a blockading squadron of the approach of an enemy fleet or neutral merchantman, or laying or removing mines at sea. By the Hague Convention, however, picking up wounded or wrecked sailors of the enemy after a naval engagement, or acting as a hospital-ship for the enemy does not constitute unneutral service. The distinctive characteristic of the second and third conditions is that the vessel should be in the exclusive service of the enemy Government at the time of the capture, which virtually makes her an addition to the enemy forces. Thus if a neutral

vessel were solely engaged in providing the enemy's forces with coal or provisions, it would be treated as an enemy vessel, and would not merely be subject to the penalties imposed for contraband trade. Lastly, if a neutral vessel, though hired in times of peace, continues after the outbreak of war to transport troops or carry war material exclusively for the enemy, she is considered to identify herself with the enemy. And it seems that notice of the war, actual or presumptive, is not necessary to make the neutral liable in such a case. But from the moment that hostilities break out, the vessel is liable to capture and condemnation or destruction if engaged in such traffic. During the war between China and Japan in 1897 the Japanese sank an English vessel which was at the opening of hostilities captured in the act of transporting Chinese troops (*The Kowshing*); and no protest was made. It was proposed at the Conference which drew up the Declaration to treat as an enemy merchant vessel any neutral vessel making with the sanction of the enemy Government a voyage which she has only been allowed to make since the outbreak of hostilities or during the two preceding months, such as a voyage in the coasting trade of the enemy usually reserved to national ships. This was an adaptation and extension of the so-called rule of 1756; but the proposal was not in the end agreed upon, and the matter was left open. (See Article 57 below.)

Article 47.—Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war, even though there be no ground for the capture of the vessel.

This is a new rule, justified by the same considerations as those advanced in the note to Article 44. The general rule of International Law is that no person can be removed at sea by a belligerent cruiser from a neutral vessel which is free from capture; and Great Britain almost treated it as a *casus belli* with the Federal Government of the United States when, during the Civil War, one of the American cruisers stopped the English passenger vessel, *The Trent*, and removed from her two persons

who were alleged to be agents of the Confederate Government. The exception to the general rule was made, as the British delegates point out in their Report, in order that large passenger steamers under a neutral flag should, if possible, be freed from the costly inconvenience of being taken into a Prize Court, and there detained, perhaps for a prolonged period, merely because a few individuals forming part of the armed forces of a belligerent, but whose military status was unsuspected by the owners or captain of the vessel, were among her passengers. If the vessel comes within the provisions of Article 45, not only may the individual be arrested, but the vessel herself may, of course, be taken as a prize. As to who is an individual embodied in the armed forces of the enemy, see note to Article 45 above.

CHAPTER IV.

DESTRUCTION OF NEUTRAL PRIZES.

Article 48.—A neutral vessel which has been captured may not be destroyed by the captor ; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

Article 49.—As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

Article 50.—Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

This chapter of the Declaration is the focus of the keenest opposition in England. The general principle laid down in Article 48, indeed, accepts the standpoint for which we have stood out, but objection is taken to the admission of the exception to the principle in Article 49. The rules of the Declaration are a

compromise between our claim that neutral prizes can in no case be sunk by the captors before condemnation in a Prize Court, and the claim made by most other Naval Powers that they may be sunk without any obligation on the captor's part to pay compensation to the owner, whenever the captor considers it necessary to do so. Great indignation was caused in England during the Russo-Japanese war, when the *Knight Commander*, a British ship, bound from New York to Yokohama with a cargo of railway material, was stopped and sent to the bottom by a Russian cruiser. But it was pointed out by Professor Holland at the time that there could not be said to be any rule of international law by which the sinking of neutral prizes was absolutely prohibited. Both the Russian and the Japanese prize regulations in force during that war allowed it under exceptional circumstances, and similar regulations were issued by France in 1870 during the Franco-Prussian War, and by the United States in 1898 during the American-Spanish War. Moreover, while the British Admiralty Prize Manual of 1888 advises destruction of enemy prizes only, and directs our captains to release any neutral prize which, either from its condition or from inability of the captor to spare a prize crew, cannot be sent in for adjudication, Lord Stowell, during the Napoleonic wars, recognized exceptional cases in which it might be right to sink captured neutral vessels. The effect of his judgment in the case of *The Actæon* (2 Dods. 48) and *The Felicity* (*ib.* 381) is that sinking is justifiable only in cases of the gravest importance to the captor State, after securing the ship's papers, and subject to the right of the neutral owners to receive full compensation; and this rule was adopted during the Crimean War by Dr. Lushington in the case of *The Leucade* (Spinks, 221). A *consensus gentium*, then, can much more easily be made out in favour of the right to destroy in exceptional circumstances than in favour of the absolute prohibition of destruction; and the British attempt at the Hague Conference, 1907, to carry a rule forbidding destruction in all cases received little or no support. That being the situation, we could hardly have made an effective protest as neutrals in a future war against a belligerent sinking our vessels for carrying contraband, when the offence was clear and there were any circumstances which rendered it difficult to bring the prize to

port; and it may well be that the rules of the Declaration provide as effective a check upon belligerent action in this direction as we could hope to obtain. They contain the solid gain that the necessity of destroying the prize must in future be always submitted to a judicial authority—in the last resort to the International Prize Court—and failing the proof of special urgency, the belligerent will have to pay compensation to the neutrals affected. They contain also the valuable safeguard that a neutral prize can only be destroyed when by the rules of the Declaration it would be liable to condemnation.

Article 48 states the general rule against destruction in unexceptionable terms. The port to which a neutral prize is to be taken for adjudication must be one belonging to the belligerent, or in territory occupied by his forces. A neutral Power may indeed allow a belligerent to take a prize into a neutral harbour for the purpose of refitting or provisioning, provided permission is granted impartially to both sides; but it cannot allow the belligerent to set up a Prize Court there, because “the exercise of jurisdiction is a right attached to sovereignty, . . . and for the territorial sovereign to grant the permission would be an unneutral loan of his sovereignty to the belligerent” (Westlake, *International Law: War*, p. 215). The practice is forbidden by a Convention signed at the Hague in 1907, but not ratified by us in its entirety. By the same Convention on the Rights and Duties of Neutrals in Naval War, it was provided (Article 21) that a prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions, and it must leave as soon as the circumstances which justified its entry was at an end. Failing this, the neutral Power must release it, as it must do also if the prize is brought in without special circumstances to justify the act. Nevertheless it was provided in a later clause of the same Convention (Article 23): “A neutral Power may admit prizes to its ports or roads whether they are escorted or not, when they are brought there in order to be left under sequestration pending the decision of the Prize Court. It can cause the prize to be conducted to another of its ports.” The prize in such a case will not be allowed to resume its voyage or to take any further part in hostilities. The alleged reason for this Article was to prevent the destruction of prizes;

and Great Britain and Japan were the only Powers which voted against it during the discussion in Committee. But in addition to Great Britain, the United States, Japan, Spain, Portugal, and Greece, all reserved their acceptance of the whole Convention, and abstained from voting on its Articles; and the Convention is therefore not binding on these Powers. The other Powers might possibly take advantage of its provisions in war, but Great Britain would probably refuse to recognize the right of a neutral State to furnish an enemy with such facilities for depositing its prizes.

The English doctrine is that proceedings upon a prize are proceedings *in rem*, and the body and substance of the thing must be in the country which is to exercise jurisdiction (*The Flad Oyen*, 1 C. Rob. 135). Again, to be a proper subject of adjudication a prize must have been brought "*infra præsidia*," which is not the case while she lies in a neutral port. The wording of the Article in the Declaration, too, seems to negative this supposed right to try a neutral prize while it is in a neutral port, since it provides that it must be taken into a port where the validity of the capture can be determined, that is, exclusively a belligerent port. Lastly, many Powers, among them Great Britain, Italy, and Japan, altogether prohibit ships of war from bringing their prizes into their ports when neutral except in case of distress, and several others limit their right of staying to twenty-four hours. In a great number of cases, then, it would be obligatory upon the captor to take his prize into a port of his own country, or possibly of an allied belligerent, where he may, by international usage, establish a Prize Court, or deposit the captured vessel pending adjudication (*The Christopher*, 2 C. Rob. 1, 209). It is the frequent difficulty of carrying out this step which has led to the general demand for some right of destruction in special circumstances.

The conditions laid down for the exceptional right of a belligerent captor to destroy neutral prizes are three—

- (1) The prize must be liable to condemnation under the rules of the Declaration.
- (2) It must involve danger to the safety—the French text has "*compromettre la sécurité*"—of the warship or the success of the operations in which she is engaged at

the time to take the prize into one of her State's ports for adjudication.

- (3) All persons on board the prize must be placed in safety, and all the ship's papers and documents bearing on the validity of the capture must be taken on board the warship.

When the first two conditions are not satisfied, the captor is mulcted in damages (see below, Articles 51 and 52), but though the third condition is apparently meant to be a condition precedent, it has not a definite sanction like the two former. The International Prize Court, however, would probably visit neglect of it by holding the destruction carried out unjustifiable. The first condition, that the prize must be liable to condemnation, will cover the case of vessels captured for breach of blockade in every case, for unneutral service in every case, and for contraband trade when more than half the cargo is contraband. When less than half the cargo is contraband, the destruction of the prize under any circumstances, is not permissible; but Article 54 provides that the captor may in such a case, where he can prove necessity, demand that the contraband goods shall be handed over to him and may then destroy them. The other condition, that the cruiser must show that it would involve danger to her own safety or the success of her operations if she were to take the prize into port, is open to some criticism. If the cruiser could plead necessity only where her own safety would be endangered by having to take the prize into a distant port, a very strong check would be placed on the temptation to destroy. But if she may make danger to the success of her operations a ground of necessity, a wider door is opened. The need of sparing a prize crew to take the prize into port might be alleged to involve danger to the success of operations; and the fact that the delegates at the London Conference were not willing to accede to England's representation, that a special proviso should be inserted in the Article to prevent such a ground being set up, illustrates the attitude of the other Powers. On the other hand, it must be remembered that destruction of prizes entails the loss of all prize money to the captors, and may henceforth involve the captor's State in claims for heavy compensation. It is not likely, therefore, to be resorted to wantonly in future.

Moreover, the captor before destruction will have in future to provide for the reception of the crew, and possibly also the passengers, of the prize which he destroys, either on his own ship where there is little room to spare, or on some vessel of his own or a neutral State which he can induce to receive them. It is probable, then, that a cruiser would in future refrain from sinking its larger and more important prizes such as ocean liners, both because it could not accommodate their crews and passengers, and because it would thus sacrifice a valuable asset to its country and might involve it in large claims for compensation. Destruction would be almost entirely restricted to small craft.

The Articles of the Declaration, though they are not as deterrent as might have been desired, are at least calculated to secure more respect for the neutral, and to place a larger measure of responsibility on the belligerent, than was witnessed in the American Civil and the Russo-Japanese wars. Of course there is no reason why Great Britain should depart from her present custom of not sinking neutral prizes, save in very exceptional circumstances; and our abundance of ports in every ocean makes it more feasible for our cruisers than for those of other nations to bring their prizes in for adjudication. We are thus enabled to gain by adding the captured vessels to our marine and confiscating their cargo; and with the new limitation on the right to destroy, our traders will be able to secure compensation in any case where their captured vessels would not have been liable to condemnation, if they had been brought in for adjudication instead of being destroyed. The outcry against destruction of prizes is largely founded upon the fact that neutral vessels have been sunk by their captors, which should not by the law of nations have been condemned at all. Now the circumstances in which a neutral vessel is liable to condemnation are quite clearly laid down by the Declaration; and the obligation of the belligerent to pay full compensation to the neutral shipowner and cargo-owner where a prize is sunk which is not legally liable to condemnation, and lastly, the power which the neutral will have, if the Declaration and the Prize Court Convention are ratified, of taking the question of the validity of the destruction to an International tribunal which will have no prejudice in favour of the belligerent, form together a combination of safeguards which should prevent outrages upon neutral

commerce such as the Russo-Japanese War produced, and should make the right of sinking prizes in future wars exceptional in fact as well as in theory.

Article 51.—A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

Article 52.—If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested in the place of the restitution to which they would have been entitled.

These provisions are calculated to secure the proper observance of the conditions prescribed in Article 49 to justify destruction. The captor must first make out before the Prize Court the exceptional necessity which rendered him unable to bring the prize into port; and if he fails to do this, he must compensate the neutral owners, both of the ship and the cargo, for their loss. Even though the cargo was contraband, or the vessel was trying to enter a blockaded port, or was committing unneutral service, the captor will not be allowed to prove the validity of his capture, but will have to pay compensation to the owner of the contraband as well as of the innocent cargo, unless he proves a genuine necessity, which led him to destroy instead of bringing in the prize. Again, if he establish the overriding necessity, but fails to prove that the capture was valid, or that the vessel captured was liable to condemnation because, *e.g.* not half the cargo was contraband, he will have to pay compensation to the injured parties. But in this contingency compensation will be payable only to the owners of the vessel and of the innocent cargo

on board. If there were any contraband goods on the sunken vessel, the owner of those goods will not be entitled to compensation ; for the confiscation of his goods by the belligerent was legitimate, and he would not have been entitled to restitution. Compensation for the purpose of these Articles means a sum to cover the value of the vessel and goods destroyed and loss of freight, and probably loss of profit.

Article 53.—If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

This provision applies to innocent cargo, when destruction of the prize has been held to be justifiable as against the vessel and the owner of any noxious cargo. But, as Lord Stowell pointed out in the case of *The Felicity* (see above, p. 94), the destruction can only be justified against an innocent neutral whose goods have been involved by full restitution in value. The rule is certainly an improvement upon present practice, by which neutrals have been left without any legal right against the belligerent, and have depended upon the efforts of diplomatic representation to obtain redress for the destruction of their property. As regards innocent neutral goods sunk with *enemy* prizes, the Declaration does not strictly apply. Several Powers, and notably France during the wars of 1870–1871, have refused to make compensation to the neutral whose goods were sunk in such circumstances. When an enemy vessel is brought in for adjudication, neutral goods upon it are not subject to confiscation ; and so it would be reasonable to give the neutral merchant compensation when his goods are destroyed. But it has been objected that a neutral trader placing his goods upon an enemy vessel must run the risk of losing them by the sinking of the vessel. The full recognition, however, in the Declaration of the right of the neutral owner to recover compensation, when his innocent goods are sunk with a neutral prize, must strengthen the argument of those who hold that he should be entitled to compensation whenever a belligerent interferes with his innocent trade. It is likely that the International Prize Court would find in the neutral's favour if the point were brought before them.

Article 54.—The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the log-book of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

Like Article 44, this provision introduces a new practice, which is based upon the desire to limit as much as possible belligerent interference with neutral traffic, in circumstances where taking the prize into port for final adjudication would involve great hardships on the neutral and little gain in any case to the belligerent. This Article can apply only to vessels carrying contraband, when the innocent cargo forms more than half of the whole. Article 44 allows the master of the neutral vessel, if he is willing, in such a case to hand over the contraband to a belligerent warship, while this Article gives the captor the right to demand the handing over of the contraband, even though the neutral master is not willing to give it up, if circumstances of necessity as defined in Article 49 exist. If the master refuses to hand over, the captor may board the neutral vessel and destroy, at his peril, the contraband part of the cargo himself. He is bound, however, to make a proper entry of his action in the log-book of the neutral vessel, and obtain copies of the relevant papers for himself, so that the legality of the action may subsequently be tested before a Prize Court. It appears that the captor must first prove before the Prize Court the necessity of his forcible action ;

and if he fails in this he must pay compensation to the neutral for the destruction of the goods, even though they were absolute contraband. And if he fails after all to prove their contraband character, he will again be liable to pay compensation. Where the handing over of the contraband is voluntarily done by the master of the neutral vessel, it will not be necessary for the captor to justify his action. The provisions as to payment of compensation, either where no overriding necessity is established, or the goods destroyed are not proved to have been contraband, should suffice to deter captors from high-handed action.

CHAPTER V.

TRANSFER TO A NEUTRAL FLAG.

Article 55.—The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

Article 56.—The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer

was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void—

- (1) If the transfer has been made during a voyage or in a blockaded port.
- (2) If a right to repurchase or recover the vessel is reserved to the vendor.
- (3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

An enemy merchant vessel is in all cases liable to capture by a belligerent, and goods upon her belonging, to an enemy subject may also be condemned though they are not contraband of war; whereas a neutral merchant vessel is ordinarily immune from capture, and enemy goods upon her, unless contraband, cannot be captured, because they are now protected by the Article in the Declaration of Paris which says that the neutral flag covers enemy goods. Hence at the prospect of war shipowners of the enemy country are often anxious to secure protection for their vessels by transferring them to a neutral flag, and if they take steps to do so sufficiently early, and genuinely dispose of their property to neutrals, the transaction cannot be upset. A belligerent cruiser, however, has always had the right to investigate whether a merchant vessel which lays claim to neutral character, but has only recently flown the neutral flag, has acquired its new character legitimately, or merely in order to be shielded from the risks to which she would have been exposed had she retained her enemy flag.

There have been hitherto wide differences between our law and that of continental countries on the transfer of ships to a neutral flag during or in contemplation of hostilities. The English and the American rule has been summarized as follows: "A neutral, while a war is imminent or after it has commenced, is at liberty to purchase either goods or ships (not being ships of

war) from either belligerent, and the purchase is valid whether the goods or ships be lying in an enemy or a neutral port. Any transfer made before the prospect of war which is sufficient to transfer the property between vendor and purchaser is good against the captor if war unexpectedly breaks out. But if war has broken out, or is imminent, a mere transfer of documents which would be sufficient to bind the parties is not sufficient to change the property as against captors, so long as the ship or goods are *in transitu*, and the purchaser has not taken possession of them" (cf. *The Baltic*, 11 Moo. P. C. 141). Thus by English and American practice, if the vessel started her voyage as an enemy vessel, and war having broken out, the sale to the neutral was contracted *in transitu*, the sale was not valid against a captor till the neutral owner had actually taken possession (*The Jan Frederick*, 5 Rob. 128). Moreover, a transfer to a neutral flag made in a blockaded port is not recognized. All liens, too, whether in favour of a neutral or an enemy ship, or of an enemy or a neutral ship, may be disregarded by the belligerent; and the transfer to the neutral must be a *bonâ-fide* out-and-out sale. If any right has been assured to the enemy vendor to recover or repurchase the vessel, the transfer will be void. In effect, then, the present English rule is that the sale to a neutral may be made at any time or place, except a blockaded port, but to be good against the captor it must be complete, *bonâ-fide*, and an out-and-out transfer, and if made in time of war the purchaser must have taken possession. The French and Russian rule, on the other hand, was that no transfer of an enemy vessel to a neutral flag after the outbreak of war was valid, but any unconditional transfer legally completed was valid if made before the war. Holland, which is specially concerned to uphold full neutral rights, recognized transfers to the neutral flag after the outbreak of war, unless made in a blockaded port; and other Powers had their special variations of practice.

The Declaration contains two articles dealing with the subject, which contrive to effect a uniform solution of the problem upon the lines of a fair compromise between the claims of neutrals to purchase vessels freely in the ordinary way of commerce, and the claims of belligerents to prevent the making of transfers by their enemy, in order to evade the consequences to which enemy vessels

are exposed. The general principle adopted is that a transfer to a neutral flag effected *before* the outbreak of war is valid, unless it is proved by the captor that it was made with the ulterior purpose; and that a transfer effected *after* the outbreak of war is invalid unless it is proved by the neutral that it was not made with the ulterior purpose. But the principle is limited by the establishment of a number of presumptions, some absolute and some rebuttable, which shift or remove the onus of proof when they apply.

By these provisions sales of ships to neutrals before hostilities are classified in three divisions:

I. If (*a*) effected more than thirty days before the outbreak, and (*b*) unconditional, and complete, and legally executed, and (*c*) the bill of sale is on board, they are valid absolutely, and cannot be challenged.

II. If made less than sixty days before the outbreak, and the bill of sale is not on board, they are presumed to be void, but the neutral may rebut the presumption by showing the transaction to be genuine and *bonâ-fidè*.

III. If the presumption set up under II. is rebutted, the neutral has no right to damages against the captor though entitled to retain the ship.

On the other hand, if the sale is proved to come under Class I., the neutral will have a right to damages for detention against the captor, unless there was something suspicious in the conduct of the vessel. In future, then, it will be advisable for all vessels, which are transferred during a period when there is a prospect of war breaking out, to carry their bill of sale; otherwise they will run the risk of being taken into a Prize Court for investigation.

Where the transfer to the neutral is made after war has broken out, it is presumed to be void; but the neutral may rebut the presumption if he can show that it was not made to evade capture except in three cases. In these cases the transfer is absolutely invalid:

- (1) If made *in transitu* or in a blockaded port.
- (2) If the enemy vendor retains any right to recover the vessel.
- (3) If the requirements of the law of the neutral country as to the right to fly the neutral flag have not been complied with.

These irrebuttable presumptions of avoidance of transfer agree with the existing British practice ; but the presumption against all transfers made after, and against those transfers made less than sixty days before, the outbreak of hostilities in which certain conditions have not been complied with, will make the transfer of enemy vessels to a neutral flag more difficult to uphold in future wars than under the present British practice. The law is made clear and definite and uniform for all countries, so that the neutral will know his exact risk ; but it is less elastic than under our practice, and more strongly in the belligerent's favour. In view of the protection which the Declaration of Paris has given to all goods carried in neutral vessels, the greater restriction on transfer effected just before war is justified.

CHAPTER VI.

ENEMY CHARACTER.

THE Declaration of London, it has been noted, does not in any way interfere with the right of a belligerent to capture the vessels and the goods which belong to subjects of the enemy country. That right indeed, which is commonly spoken of as the right of capturing private property at sea, is affirmed by inference in this chapter of the Declaration, and more explicitly in the sections of the Report attached to the Declaration which explain the Articles in this chapter. The only limitations to the belligerents' right of capture are provided by the Declaration of Paris which states that enemy goods save contraband of war cannot be captured on neutral vessels, and by two Conventions of the Hague Conference, 1907. Of these one (No. 6) declares that a belligerent merchantman found in an enemy port at the commencement of hostilities should be allowed to depart directly to its port of destination under a pass, and that belligerent merchantmen, found on the high seas while still ignorant of the outbreak of hostilities, should be sequestered with any enemy cargo on board till the end of the war, or requisitioned or destroyed subject to the payment of compensation, but should not be confiscated. These provisions, however, do not apply to vessels which show by their build that they are intended for conversion into warships, and these may be captured anywhere on the outbreak of war. The other Hague Convention which deals with the subject (No. 11) provides that enemy vessels employed exclusively in coast fisheries, or small boats employed in local trade, and vessels employed on religious, scientific, or philanthropic missions are exempt from capture. The exemption no longer applies from the moment that any of these vessels takes any part whatever in hostilities.

Since, however, subject to these provisions, enemy ships and

enemy goods on them, though not contraband, are still subject to capture and condemnation or destruction by a belligerent, and on the other hand neutral ships and all goods on them save contraband articles are not normally subject to capture, the determination of what constitutes the enemy or neutral character of both ships and goods is a necessary part of an international Prize Law. Hitherto there has been divergence on the subject between Anglo-Saxon and Continental Law; and while the Declaration provides a clear and satisfactory rule as regards ships, its solution of the problem as regards goods is incomplete.

Article 57.—Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

The general rule established for determining the character of a vessel has the great merit of simplicity. Hitherto there has been divergence between English and Continental ideas as to the test of enemy character. We have maintained the position that while a vessel sailing under the enemy flag is always good prize, the domicil of the owner either of ships or of goods is in other cases the true test of enemy or neutral character. Domicil for this purpose is acquired either by actual residence or an establishment for the purposes of trade. If the owner, though an enemy subject, is domiciled in neutral territory, his ship (unless bearing the hostile flag) or his goods must be treated as neutral; if, on the other hand, though a neutral subject, he is domiciled in the enemy country, his ship or his goods must be treated as enemy property. Continental practice has, however, regarded nationality as the sole true test. If the owner of the ship or goods is a subject of the enemy country, they are enemy property; if a neutral subject, they are neutral property. The London Conference did not come to any agreement as to the true test of the character of goods (see

next article), but they found a simple way, agreeable to all nations, of determining the character of ships. Subject to the provisions of Articles 55 and 56 respecting transfer from an enemy to a neutral flag made shortly before or during hostilities, the character of a merchant vessel is determined by the flag which she is entitled to fly according to the municipal (*i.e.* the national) laws which govern that right. By English law only natural-born or naturalized British subjects, or companies established under British law and having their principal place of business in the British dominion, can own in whole or part a British ship, or fly the British flag. Hence an enemy subject or corporation could not own a vessel flying our flag. But each country has its special rules determining the right to fly the flag or to own ships. The general effect of this Article of the Declaration is, however, to adopt the test of nationality of the owner for ships. Of course a merchant vessel may be flying a false flag, *e.g.* it may be an enemy ship and flying a neutral flag to evade capture. The belligerent in such a case may disregard the actual flag, and treat the vessel as though it were enemy property; and again when the transfer to the neutral flag has been made in such circumstances that there is an absolute presumption against its validity as regards the belligerent, though valid by the national law of the neutral, the belligerent may still treat the vessel as enemy property. The effect of investing the vessel with enemy character is that—

- (1) the belligerent has complete property in it as soon as he has effected the capture, and may sink it if he chooses, or bring it into port for condemnation;
- (2) all goods found on board are presumed to be enemy goods. (See Article 59.)

The second part of Article 57 refers to what is known as the Rule of 1756, and leaves open the question of the binding effect of that rule. The English Prize Courts during the wars of the eighteenth and the early part of the nineteenth century condemned neutral vessels engaged in the coasting and colonial trade of the enemy which was closed to them in times of peace; and this practice was called after the war in which it was first enforced. Lord Stowell, in the case of *The Immanuel* (2 C. Rob. 186), declared that a neutral had no right to carry on in time of

war a trade "which he has never possessed, which he holds by no title of use and habit in times of peace, and which in fact he can obtain in war by no other title than by the success of the one belligerent against the other, and at the expense of that very belligerent under whose success he sets up his title." He therefore condemned neutral vessels, thus engaged, as enemy property, though many Continental countries and the United States raised protests at the time. But it is significant that in the Russo-Japanese War the Japanese Prize Court condemned an American vessel, the *Montara*, for being engaged in a trade with Russian ports closed to foreign vessels in times of peace, and no protest was made; and the Russians sank a German vessel, the *Thea*, for being engaged in the Japanese coasting trade. And as the tendency is growing for Continental countries to reserve cabotage in a very wide sense for vessels sailing under their own flag, the rule may receive a new importance in a future war; and the reasoning on which it is founded is likely to be upheld not only by the English, but also by the International Prize Courts. France to-day reserves exclusively the trade between herself and Algeria for vessels sailing under her flag; Russia reserves for her own vessels all the shipping trade between any of her Baltic ports and Vladivostock; and the United States treats as coasting trade which is excluded to her own vessels all trade between her ports in the Atlantic and the Pacific, and between any of her ports and her colonial possessions. If any of these Powers were at war, it would be reasonable for their enemy to treat neutral vessels engaged in any of these closed "coasting trades" as doing enemy service and therefore to condemn them. As above stated (see note to Article 46) the London Conference was not unanimous on a proposal to declare engagement by a neutral in such trading as unneutral service, though both the German and English representatives voted for it. The matter, then, is not concluded by the Declaration, and is left for future negotiation, or for the International Prize Court to decide according to the general principles of justice and equity.

Article 58.—The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

Though it settles part of the problem of the character of goods, and removes a few anomalies of belligerent practice, this provision is inconclusive, and does not dispose of the divergence of practice noted above between the Anglo-Saxon and the Continental nations as to the test of enemy and neutral character; for by saying that the test of the character of the goods depends on the character of the owner, the question is left open as to what determines the character of the owner. At the London Conference the Powers were equally divided on the question whether the nationality or the domicile of the owner of the goods should be the test of his character. France, Germany, Austria, Italy, and Russia upheld the exclusive application of the principle of nationality; Great Britain, the United States, Japan, Holland, and Spain desired that both nationality and domicile should be considered. For the sake of securing a uniform rule our representatives were willing to accept the standard of domicile, but the representative of the United States was not equally complacent. Our Prize Courts would in these circumstances doubtless continue to apply our existing rules, and if the question is taken to the International Prize Court, it is quite likely that our practice would be generally approved, since it has logic and definiteness in its favour. But since the Declaration of Paris declares enemy goods to be immune in neutral bottoms, the question has not any great practical importance.

One slight change in our practice is involved by the Article of the Declaration. Hitherto the Anglo-American rule has been that the produce of an estate in enemy territory, or in territory occupied by the enemy, though belonging to a neutral subject resident in a neutral country, has enemy character, on the ground that it is tainted by the country of its origin (*The Phoenix*, 5 Rob. 20; *The Thirty Hogsheads of Sugar v. Boyle*, 5 Cranch, 191). But as the Article makes the enemy character of goods depend entirely on the enemy character of their owner, this exception to the general rule, which was rather oppressive upon neutrals, is tacitly annulled. It cannot be said, however, that the derogation from our belligerent right is of much consequence, since the chances of such produce belonging to a neutral being captured upon an enemy ship are not great, and on a neutral ship it would

anyhow, unless contraband, in virtue of the Declaration of Paris, be immune from capture.

The goods of a partnership or a corporation, such as a limited liability or a joint-stock company, will for all cases bear the enemy or neutral character of the partnership or corporation. The residence of a partnership or company is determined in English law by the place whence its business is controlled (cf. *Nigel Gold Mining Co. v. Hoade*, [1901] 2 K. B. 849; and *Driefontein Consolidated Mines v. Janson*, L. R. 1902, A. C. 505). By a rule of our Prize Law, where one or more of the partners is domiciled in enemy territory, any property of the partnership seized on an enemy vessel is presumed to be divided proportionately between the partners, and the share attributed to the partner in enemy territory is deemed enemy property (*The Citto*, 3 C. Rob. 38). This rule, it is presumed, will still be applied by our Courts, but some international agreement upon the status of trading partnerships and corporations in times of war is urgently wanted.

Another small and on the whole beneficial change in our practice which the Article will involve, is that the character of the goods will no longer depend upon certain rather artificial and technical rules laid down by Lord Stowell upon the effect of transfers made before the outbreak of war. He held that if "in the clear expectation of both the contracting parties the State to which the transferor belongs is likely to become a belligerent before the arrival of the property," the goods remain enemy property, although by the ordinary law the transferee would become the owner (*The Jan Frederick*, 5 C. Rob. 128). The principle applied by the Declaration to the transfer of ships to a neutral, that if made before outbreak of war to evade capture it is not valid, is not extended to goods; and as the character of the goods depends simply on the character of the owner at the time of capture, the goods transferred to a neutral subject by a consignor in the enemy country before war broke out would by the Article be deemed neutral goods. On the other hand, it is likely that the rule of Anglo-American Prize Law, would still obtain, by which property going to be delivered in the enemy's country and under a contract to become the property of the enemy immediately on arrival, if taken *in transitu*, is deemed to be enemy property. (See *The Sally*, 3 C. Rob. 300.) In this case the master of the

vessel from the time the goods are delivered to him is regarded as the agent for the consignee, who is the owner ; and therefore as the owner of the goods at the time of capture would have enemy character, the goods would be enemy goods.

Article 59.—In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

If a neutral merchant ships his goods on an enemy vessel during war, the onus of proof is on him to show that the goods are neutral. If he can discharge this onus, and the goods are not contraband, he is entitled to restitution, though not to any damages for detention ; if he cannot discharge the onus, the goods are condemned. This Article is in accordance with English practice.

Article 60.—Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

This Article likewise adopts the existing English rule in the main. While a transfer of the vessel to a neutral after the outbreak of hostilities is exceptionally valid by the Declaration, though looked at with the most searching scrutiny (see Article 56), a transfer to a neutral of enemy goods *in transitu* after hostilities have broken out is altogether void. During times of peace goods can be transferred *in transitu*, and are normally held to belong to the purchaser from the consignee ; but, in times of war, as the Report to the Declaration states:—" the ease with which enemy goods might secure protection from the exercise of the right of capture by means of a sale, which is

made subject to a reconveyance of the property on arrival, has always led to a refusal to recognize such transfer." Liens and charges likewise in favour of a neutral owner are not recognized by the captor. But if, before the capture is actually made, a neutral consignor who has not been paid for the goods exercises his right of stoppage *in transitu* in the event of the bankruptcy of the enemy consignee, the goods are allowed to regain their neutral character and are not liable to confiscation. By the Sale of Goods Act, 1893 (sec. 44), the unpaid seller in England who has parted with the possession of the goods has this right of stoppage *in transitu*, when the buyer of the goods becomes insolvent; and a similar law exists in most Continental countries. This resumption of legal property by the neutral vendor cannot give rise to any fraud upon the belligerent's right of capture, since, to be valid against the captor, it must have been exercised before the capture; and though it has not hitherto been recognized by the British Prize Courts, its admission by the Declaration as an exception to the general rule that there can be no transfer *in transitu* of goods on an enemy vessel consigned to or by an enemy, is in accordance with the general principles of justice and equity.

CHAPTER VII.

CONVOY.

ONE of the most irksome forms of belligerent interference with neutrals is the right of any belligerent warship to search any neutral vessel she meets at any part of the high seas, or in the territorial waters of her own or the enemy country, however remote from the seat of war, in order to ascertain if the neutral is infringing in any way the laws of neutrality. In order to avoid the inconvenience of search, neutral merchantmen in the past have occasionally sought the protection of a ship of war of their own State, which convoys them across the ocean. It is the duty of the commander of the convoying ship to ascertain that no contraband goods are stored on the vessels under his charge, and the fact that he accepts them in the convoy is *primâ facie* evidence that he has been assured on this point. Hence Continental countries have as neutrals regularly claimed that their convoyed merchantmen shall be free from belligerent search, and as belligerents they have refrained from exercising the right of search over convoyed vessels of other Powers. Great Britain, however, in the past has not always acceded to their claim or followed their practice, and has claimed to search the convoyed vessels of neutrals. But the changes in maritime conditions, in the laws of maritime capture, and in the general relations of belligerents towards neutrals which have occurred since the Napoleonic wars, have led her during the last century to waive the rights in practice which she retained in theory. The Declaration disposes of the controversy, and it is to be remembered that while the concession on our part is regarded by our naval advisers as unimportant in its effect on our belligerent powers, it may be of considerable benefit to us, as the chief carrying nation, when we are neutrals; and, when we are at war, it will help to

secure neutral vessels bringing supplies for our population from interference.

Article 61.—Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

Article 62.—If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

Lord Stowell laid down the English doctrine upon the matter of convoy very emphatically in the case of *The Maria* (1 C. Rob. 350), when he was condemning convoyed Swedish vessels which had resisted search. "The authority of the sovereign of the neutral country being interposed in any manner of war cannot legally vary the rights of lawfully commissioned belligerent cruisers, and the penalty for the violent contravention of this right is the confiscation of the property so withheld from search." And Lord Brougham went so far as to say "the presence of the convoyed ship, so far from being a sufficient pledge of innocence, is rather a circumstance of suspicion." Continental Powers, however, have regularly claimed that convoyed vessels shall be immune from search; and the United States, which long followed our practice, by their Naval Code of 1900 adopted the Continental standpoint. In practice, too, England has not

exercised her alleged belligerent right for a long period ; and even in 1801, during the Napoleonic wars, she agreed with Russia to accept the guarantee of the neutral officer in charge of the convoy, unless there was ground for suspicion. Hence her waiver of her old claim is a reasonable concession to the general practice of nations ; and as was pointed out long before the Conference of London was contemplated, the retention of the right, while irksome to neutrals, is now of little practical importance to her as belligerent, because—

- (1) The main object of search formerly was to capture enemy goods on the neutral vessel, but since the Declaration of Paris enemy goods on neutral vessels have been free from capture, and the object of search is now only to detect contraband. If a large quantity of contraband were present on the convoyed vessel it could be detected by the neutral officer, who must examine the cargo if called upon to do so by the belligerent, so that the need for the independent investigation by the belligerent commander largely disappears. It has, moreover, been cogently pointed out by Dr. Westlake that the settlement of the tests of absolute and conditional contraband by Chapter II. of the Declaration disposes of the chief reason which a belligerent might have had hitherto for distrusting the report of the neutral naval officer. So long as the tests of contraband varied in the different national prize laws, the guarantee of the officer of another country was more open to question than it will be when the Declaration is ratified.
- (2) Neutral vessels seeking to break blockade enjoy no immunity by reason of convoy, if, after notice to the convoying ship, they come within the sphere of operations of the blockading force.
- (3) Hall, in his standard book on International Law, pointed out twenty years ago—and the Royal Commission on Food Supply recently confirmed the opinion—that in future the difficulty of transporting a number of vessels of different rates of speed in one body will make convoying a rare event.

- (4) It is not to be supposed that with the greater recognition of the duties of neutrality which has taken place in the last hundred years, a neutral State would wilfully deceive one belligerent by convoying merchant vessels which to its knowledge were loaded with contraband for the enemy. If it did act fraudulently the belligerent could bring it to book. The report of the commander of the convoy therefore, though not as conclusive as the result of a search which a belligerent might conduct himself, would form some guarantee of the character of the cargo ; and the provision that if the facts shown by the report justify capture, the protection of the convoy must be withdrawn, secures the belligerent from a gross abuse of the neutral Power's confidence. The Report to the Declaration states that in suspicious cases the commander of the convoy may invite the belligerent officer to be present at the investigation ; but it was thought best that he should not be put under any obligation to do so. The report of the convoy's commander must be furnished in writing.

CHAPTER VIII.

RESISTANCE TO SEARCH.

Article 63.—Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

This provision is in accordance with the existing English rule (see the remarks of Lord Stowell in *The Maria*, p. 117), and with the principles of justice and equity. Save in the case of merchantmen under the convoy of a neutral man-of-war, all neutral vessels are liable to search by any belligerent warship at any place on the high seas, however distant from the scene of operations. They must stop when called upon to do so, they must submit to the search of the belligerent officers; and if contraband goods or any suspicious circumstances are found which lead the belligerent to effect a capture, they must submit to be taken into a Prize Court without any resistance. The only legal modification of the liability to search of neutral vessels is the provision in the Hague Convention, No. 11, to the effect that neutral mail-boats ought to be searched only in case of necessity, and then with all the consideration and speed possible. Submission is only obligatory where the search is made by a properly authorized man-of-war of the belligerent; and, as has been pointed out, Great Britain does not recognize enemy merchantmen converted into warships on the high seas as legitimate men-of-war. It will obviously be more expedient, however, for an English neutral vessel not to resist

capture by such a belligerent captor, but to prevail upon her own State to make a diplomatic protest against the legality of the seizure and a demand for compensation.

It is stated in the Report to the Declaration that mere flight by the neutral vessel in the desire to escape search will not be visited by punishment. If she is proved in the end to have contraband of war, she will suffer the proper penalty for her breach of neutral duty: but no additional penalty will be enforced because she tried to get away; and if she is not liable to capture otherwise, the attempt at flight will not inculpate her. To involve the condemnation of the vessel, there must be forcible resistance to the belligerent's search. The British Courts in the past have condemned neutral goods found upon an armed enemy merchantman, on the ground that it must have been in the contemplation of the shipper in such a case that the vessel would seek to resist capture (cf. *The Fanny*, 1 Dods, 548). Presumably this practice would be upheld by the International Prize Court, so that neutral goods found on the armed liner of a belligerent would be liable to condemnation.

The assimilation of the prize which resists capture to an enemy vessel has the consequence (1) that it may be sunk by the captor, subject only to his obligation to pay compensation to any innocent neutral who proves that he had innocent cargo on board, (2) that all the cargo is presumed to be enemy property, and (3) that any enemy goods on board are confiscated. Goods belonging to the master or the owner of the vessel are also confiscated; but any other neutral who owns part of the cargo may prove the innocent character of his property and obtain restitution of his property, or, if it has been destroyed, compensation, because neutral goods on enemy vessels are free from capture.

CHAPTER IX.

COMPENSATION.

Article 64.—If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

Many Continental Governments have not hitherto recognized any general or definite obligation to pay compensation to the owners of neutral vessels and neutral cargoes, where the capture has not been upheld by the Prize Court, and no good reason for effecting it existed. In English Prize Courts, when the captor has failed to make out any case against a prize brought in for carrying contraband, and there were no good grounds for the seizure by the captor, compensation has been awarded to the claimants (*The Ostsee*, 9 Moo. P. C. 150; *The Leucade*, Spinks, 21). But for the most part when we have been neutral it has been left to pressure from the Foreign Office to secure what redress it could for unjustifiable captures of our merchantmen. And the ways of diplomacy are slow and uncertain. The Article of the Declaration therefore marks a valuable advance in the recognition of the claims of neutral traders not to be wantonly interfered with by belligerent cruisers. If the neutral vessel has committed any breach of neutral duty, then the owners of any part of the cargo, though themselves innocent, are involved in the offence of the vessel, and cannot recover compensation for loss of freight or detention. Even if the neutral vessel, without committing any definite breach of duty, has by her conduct led the captor to suspect her innocence, either by throwing some

of her papers overboard, or by carrying false or forged papers, or by being far out of the proper course for her alleged destination, no compensation will be payable by the captor, though the Prize Court eventually releases the vessel. For the captor's original seizure will have been justified, and the neutral cargo-owner can only recover compensation, if at all, from the master or owner of the vessel.

But if the capture be not upheld by the Prize Court—either the National or the International Prize Court, to which an appeal may be taken by the neutral State or the neutral individual dissatisfied with the decision of the national tribunal—and if there appear to have been no suspicious circumstances which justified the capture, then compensation will be payable to all the parties interested. The Article provides also that if the prize is released without any judgment being given, compensation is due. The executive officers of the belligerent State may release the vessel before it is brought up in the Prize Court, or the charge against the vessel or the goods may be withdrawn before the Prize Court has given its decision, because the absence of guilt is clear. In either case the neutral will be entitled to recover damages for the unjustifiable detention; but the claim in this contingency cannot be taken to the International Prize Court, which only has jurisdiction as an appellate court from the decisions of National Prize Courts. If the neutral is dissatisfied with the amount of compensation awarded by the belligerent in such a case, he must proceed by diplomatic means.

The Naval Prize Bill which was introduced into the House of Commons during the session of 1910, contained a clause to the effect that when a ship has been taken as prize, a Prize Court may award compensation in respect of the capture, notwithstanding that the ship has been released. This provision gives effect to the Article of the Declaration, and will doubtless be included in the new Naval Prize Bill.

No provision is made for the measure of compensation, or for the method of assessing it, or for the time within which it is to be paid. These things are left to be determined by the National Prize Courts in the first place, and the International Tribunal in the last resort. Doubtless the English Courts would tend to restrict the compensation to the direct loss suffered by

the owner of the vessel or the goods. Indirect loss would be too speculative to assess, and in the famous *Alabama* claims, which were adjudicated by the Geneva Arbitration in 1872, Great Britain strongly and successfully opposed the American demand to be compensated for the indirect losses to her commerce caused by the depredations of the Confederate cruiser. This Article merely lays down a broad principle which will have to be worked out in detail by the practices of the nations.

FINAL PROVISIONS.

The last six Articles of the Declaration contain provisions relating to the effect of the Declaration, its ratification, its coming into force, its denunciation, and the accession of Powers unrepresented at the London Conference.

Article 65.—The provisions of the present Declaration must be treated as a whole, and cannot be separated.

A similar proviso was attached to the Declaration of Paris, in which, as in this Declaration, the Signatory Powers made mutual concessions in order to obtain a uniform law. It would clearly be inequitable to allow a Power to adopt that part of the Declaration where it has received concessions from the rest, and to reserve its acceptance of the part where it has made concessions.

Although divided into chapters, the Declaration is one organic whole, and must be so treated. Hence it must be ratified as a whole, if at all; though naturally any Power which on consideration is not willing to ratify it in its present form may endeavour to obtain the acceptance of modifications of it by the other Signatories. Nor is there anything to prevent any Power, which refuses to ratify it now, adopting any part or the whole of it in the Code of Prize Law which it will employ in a future war. But unless it ratifies the Declaration as a whole, it cannot claim as a belligerent to enjoy the benefit of the code at the hands of any enemy who is a Signatory.

Any Signatory, too, is at liberty, on ratifying the Declaration,

to make reservations as to the points of maritime law which the Declaration has not settled, viz. the right of converting merchantmen into warships, the test of the character of the owner of goods on enemy vessels, and the continuing validity of the Rule of 1756. It may stipulate that it will adhere to its present rules on these subjects, and that it will not accept the judgment of the International Prize Court in a contrary sense.

Article 66.—The Signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

Mr. Gibson Bowles, the most vehement opponent of the Declaration, has treated this provision as though it were the head and front of the offence of our representatives; but it is merely a formal corollary to the instrument. It is obviously useless for the nations to agree on a law unless they are willing to carry it out. The Declaration is strictly binding only upon the Signatories in a case where all the belligerents are parties thereto. But as it is hoped to obtain general recognition of the rules (see Article 70) and the accession of the minor naval Powers which were not represented at the Conference, it will probably, if ratified by its present Signatories, become an International code of general validity. If a Signatory should violate any of the Articles, the other Powers would combine to secure redress in the interests of each other's subjects; and this, together with the action of the International Prize Court, should be a sufficient sanction. The Signatory Powers will have to bring their Prize Law into agreement with the Declaration; but in Great Britain no legislative action is necessarily required to effect this, as the Prize Law is not contained in a Statute or Statutes, but depends for the

most part on the recorded decisions and practices of our Admiralty Courts. An international treaty ratified by the country is binding on the Courts, and supplants any part of the existing Prize Law with which it is not in accord. Nevertheless, it might be convenient if the Declaration of London, after ratification, was passed as a Statute through the English legislature, or incorporated with a Statute consolidating the whole of our Prize Law. The Manual of Prize Law issued by the Admiralty to naval officers and others will need to be partly re-written if the Declaration is ratified, and in a future war wherein we are neutral the proclamation of neutrality which is regularly issued by the Sovereign will doubtless take account of the provisions of the Declaration, if they are binding upon the particular belligerents.

Article 67.—The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph,

inform them at the same time of the date on which it received the notification.

Article 68.—The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

Article 70.—The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

Article 71.—The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

These are purely formal Articles : no Power has yet ratified the Declaration, and the signature by the Plenipotentiary, attached at the close of the London Conference which drew up the Convention, has no binding effect upon his country until ratification. In the United States the Declaration, like all other treaties, will have to be ratified by the Senate.

The desire expressed for the general recognition of the rules and for the accession of other Powers is noteworthy ; and it should further be remarked that if England were to refrain from ratifying, while all the other Signatories did ratify, the Declaration, we should when neutral be unable to make any effective protest against a Power acting according to its rules, and when belligerent we could not expect neutrals trading with us to receive more consideration at the hands of our enemy than is provided for by the Declaration. Rules which have such a weight of opinion and authority behind them as those of the Declaration would possess, if all the Signatories save Great Britain adopted them, could not be regarded as unfair belligerent innovations.

Article 69.—In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

As is stated in the Report to the Declaration, it is a corollary of this Article that the Declaration is of indefinite duration. At any time all the Powers concerned may agree to modify it, to add to it, or to replace it, and particular provisions may be affected by international conventions formulated at Hague Conferences. It is, however, open to any Signatory Power to declare that it will no longer be bound by the Declaration at the definite intervals provided. But it cannot do so at the beginning or in the course of a war, and one year's notice of the intention to denounce must be given to the British Government. The denunciation, moreover, will not serve as a general release of all parties from the Declaration; only the Power making it will be affected. It will not be bound as a belligerent by the terms of the Declaration, nor will any other Power, if belligerent, be bound by them towards it, at least in theory, or towards neutrals dealing with it; but the powers of the International Prize Court to reverse sentences of National Prize Courts which are not passed according to the rules of International Law will act as a check against any serious departure from the provisions of the Declaration, even by Powers which are not formally bound by it.

It is to be noted that the International Prize Court Convention remains in force for only twelve years in the first place

(Article LV., p. 167). Unless denounced, however, it is to be renewed tacitly by all the parties from six years to six years. Notice of denunciation may be given by any Power which has ratified the Convention in the same way as is provided for the Declaration, and the effect of denunciation is similar. But it will be possible for England or any other Power, dissatisfied with the decisions of the tribunal, to repudiate its jurisdiction in any future war.

APPENDIX A.

OFFICIAL TEXT AND TRANSLATION OF THE DECLARATION OF LONDON.

THE LONDON NAVAL CONFERENCE.

Signed at London, February 26, 1909.

Protocole de Clôture.

La Conférence Navale de Londres, convoquée par le Gouvernement de Sa Majesté Britannique, s'est réunie, le 4 décembre 1908, au Ministère des Affaires Étrangères, à l'effet de déterminer les principes généralement reconnus du droit international dans le sens de l'article 7 de la Convention signée à La Haye le 18 octobre 1907, pour l'établissement d'une Cour internationale des prises.

Les Puissances, dont l'énumération suit, ont pris part à cette Conférence, pour laquelle elles avaient désigné les Délégués nommés ci-après :

L'ALLEMAGNE.

M. Kriege, Conseiller Actuel Intime de Légation et Jurisconsulte au Département des Affaires Étrangères, Membre de la Cour Permanente d'Arbitrage, Délégué Plénipotentiaire;

M. le Capitaine de vaisseau Starke, Attaché naval à l'Ambassade Impériale à Paris, Premier Délégué naval;

M. Göppert, Conseiller de Légation et Conseiller adjoint au Départe-

Final Protocol.¹

The London Naval Conference, called together by His Britannic Majesty's Government, assembled at the Foreign Office on the 4th December, 1908, with the object of laying down the generally recognized principles of international law in accordance with Article 7 of the Convention signed at The Hague on the 18th October, 1907, for the establishment of an International Prize Court.

The Powers enumerated below took part in this conference, at which they appointed as their representatives the following delegates :

GERMANY.

M. Kriege, Privy Councillor of Legation and Legal Adviser to the Department of Foreign Affairs, Member of the Permanent Court of Arbitration, Plenipotentiary Delegate;

Captain Starke, Naval Attaché to the Imperial Embassy at Paris, Naval Delegate;

M. Göppert, Councillor of Legation and Assistant Councillor to the

¹ The Final Protocol and the annexed Declaration were signed in the French language only. The French text and translation here given appeared in the British Blue Book, Misc. No. 4 (1909), Cd. 4554.

ment des Affaires Etrangères,
Délégué juridique;

M. le Capitaine de corvette de
Bülow, Deuxième Délégué naval.

LES ÉTATS-UNIS D'AMÉRIQUE.

M. le Contre-Amiral Charles H.
Stockton, Délégué Plénipotentiaire;

M. George Grafton Wilson, Pro-
fesseur à l'Université de Brown,
et Conférencier en Droit interna-
tional à l'École Navale de
Guerre et à l'Université de Harvard,
Délégué Plénipotentiaire.

L'AUTRICHE-HONGRIE.

Son Excellence M. Constantin
Théodore Dumba, Conseiller Intime
de Sa Majesté Impériale et Royale
Apostolique, Envoyé Extraordinaire
et Ministre Plénipotentiaire, Délégué
Plénipotentiaire;

M. le Contre-Amiral Baron Léo-
pold de Jedina-Palombini, Délégué
naval;

M. le Baron Alexandre Hold de
Ferneck, Attaché au Ministère de
la Maison Impériale et Royale et des
Affaires Etrangères, Professeur
agrégé à l'Université de Vienne,
Délégué adjoint.

L'ESPAGNE.

M. Gabriel Maura y Gamazo,
Comte de la Mortera, Député au
Parlement, Délégué Plénipoten-
tiaire;

M. le Capitaine de vaisseau R.
Estrada, Délégué naval.

LA FRANCE.

M. Louis Renault, Ministre
Plénipotentiaire, Professeur à la
Faculté de Droit de Paris, Juri-
consulte du Ministère des Affaires
Étrangères, Membre de l'Institut
de France, Membre de la Cour
Permanente d'Arbitrage, Délégué
Plénipotentiaire;

M. le Contre-Amiral Le Bris,
Délégué technique;

M. H. Fromageot Avocat à la
Cour d'Appel de Paris, Délégué
technique;

M. le Comte de Manneville,
Secrétaire d'Ambassade de Première
classe, Délégué.

Department for Foreign Affairs,
Legal Delegate;

Commander von Bülow, Second
Naval Delegate.

THE UNITED STATES OF AMERICA.

Rear-Admiral Charles H. Stock-
ton, Plenipotentiary Delegate;

Mr. George Grafton Wilson, pro-
fessor at Brown University, and
Lecturer on International Law at
the Naval War College and at Har-
vard University, Plenipotentiary
Delegate;

AUSTRIA-HUNGARY.

His Excellency M. Constantin
Théodore Dumba, Privy Councillor
of His Imperial and Royal Apostolic
Majesty, Envoy Extraordinary and
Minister Plenipotentiary, Pleni-
potentiary Delegate;

Rear-Admiral Baron Léopold de
Jedina-Palombini, Naval Delegate;

Baron Alexandre Hold de Fer-
neck, Attaché to the Ministry of
the Imperial and Royal Household
and of Foreign Affairs, Professor
on the Staff of the University of
Vienna, Assistant Delegate.

SPAIN.

M. Gabriel Maura y Gamazo,
Count de la Mortera, Member of
Parliament, Plenipotentiary Dele-
gate;

Captain R. Estrada, Naval Dele-
gate.

FRANCE.

M. Louis Renault, Minister
Plenipotentiary, Professor at the
Faculty of Law at Paris, Legal
Adviser to the Ministry of Foreign
Affairs, Member of the Institute
of France, Member of the Perma-
nent Court of Arbitration, Pleni-
potentiary Delegate;

Rear-Admiral Le Bris, Technical
Delegate;

M. H. Fromageot, Barrister at
the Court of Appeal in Paris,
Technical Delegate;

Count de Manneville, Secretary
of Embassy of the First Class,
Delegate.

LE GRANDE-BRETAGNE.

M. le Comte de Desart, K.C.B.,
Procureur-Général du Roi, Délégué
Plénipotentiaire;

Le Contre-Amiral Sir Charles
L. Ottley, K.C.M.G., M.V.O., R.N.,
Délégué;

M. le Contre-Amiral Edmond J.
W. Slade, M.V.O., R.N., Délégué;

M. Eyre Crowe, C.B., Délégué;

M. Cecil Hurst, C.B., Délégué.

L'ITALIE.

M. Guido Fusinato, Conseiller
d'Etat, Député au Parlement,
ancien Ministre de l'Instruction
Publique, Membre de la Cour
Permanente d'Arbitrage, Délégué
Plénipotentiaire;

M. le Comte Giovanni Lovatelli,
Capitaine de vaisseau, Délégué
naval;

M. Arturo Ricci-Busatti, Con-
seiller de Légation, Chef du Bureau
du Contentieux au Ministère des
Affaires Étrangères, Délégué ad-
joint.

LE JAPON.

M. le Vice-Amiral Baron Toshiatsu
Sakamoto, Chef du Département
de l'Éducation navale, Délégué
Plénipotentiaire;

M. Enjiro Yamaza, Conseiller
à l'Ambassade Impériale à Londres,
Délégué Plénipotentiaire;

M. le Capitaine de vaisseau
Sojiro Tochinai, Attaché naval à
l'Ambassade Impériale à Londres,
Délégué naval;

M. Tadao Yamakawa, Conseiller
au Ministère Impérial de la Marine,
Délégué technique;

M. Sakutaro Tachi, Professeur
à l'Université Impériale de Tôkiô,
Délégué technique;

M. Michikazu Matsuda, Deuxième
Secrétaire à la Légation Impériale
à Bruxelles, Délégué technique.

LES PAYS-BAS.

M. le Vice-Amiral Jonkheer J.
A. Roëll, Aide-de-Camp de sa
Majesté la Reine en Service Extra-
ordinaire, ancien Ministre de la
Marine, Délégué Plénipotentiaire;

M. le Jonkheer L. H. Ruys-
senaers, Envoyé Extraordinaire et

GREAT BRITAIN.

The Earl of Desart, K.C.B.,
King's Proctor, Plenipotentiary
Delegate;

Rear-Admiral Sir Charles Ottley,
K.C.M.G., M.V.O., R.N., Delegate;

Rear-Admiral Edmond J. W.
Slade, M.V.O., R.N., Delegate;

Mr. Eyre Crowe, C.B., Delegate;

Mr. Cecil Hurst, C.B., Delegate.

ITALY.

M. Guido Fusinato, Councillor
of State, Member of Parliament,
ex-Minister of Public Instruction,
Member of the Permanent Court of
Arbitration, Plenipotentiary Dele-
gate;

Captain Count Giovanni Lova-
telli, Naval Delegate.

M. Arturo Ricci-Busatti, Coun-
cillor of Legation, Head of the
Legal Department of the Ministry
for Foreign Affairs, Assistant Dele-
gate.

JAPAN.

Vice-Admiral Baron Toshiatsu
Sakamoto, Head of the Naval
Education Department, Plenipoten-
tiary Delegate;

M. Enjiro Yamaza, Councillor of
the Imperial Embassy in London,
Plenipotentiary Delegate;

Captain Sojiro Tochinai, Naval
Attaché at the Imperial Embassy
in London, Naval Delegate;

M. Tadao Yamakawa, Councillor
to the Imperial Ministry of Marine,
Technical Delegate;

M. Sakutaro Tachi, Professor at
the Imperial University of Tôkiô,
Technical Delegate;

M. Michikazu Matsuda, Second
Secretary at the Imperial Legation
at Brussels, Technical Delegate.

NETHERLANDS.

Vice-Admiral Jonkheer J. A.
Roëll, A.D.C. on special service to
Her Majesty the Queen, ex-Minister
of Marine, Plenipotentiary Dele-
gate;

Jonkheer L. H. Ruysenaers, En-
voy Extraordinary and Minister

Ministre Plénipotentiaire, ancien Secrétaire-Général à la Cour Permanente d'Arbitrage, Délégué Plénipotentiaire;

M. H. G. Suric, Lieutenant de vaisseau de Première classe, Délégué naval.

LA RUSSIE.

M. le Baron Taube, Docteur en droit, Conseiller au Ministère Impérial des Affaires Etrangères, Professeur de Droit international à l'Université de Saint-Petersbourg, Délégué Plénipotentiaire;

M. le Capitaine de vaisseau Behr, Attaché naval à Londres, Délégué naval;

M. le Colonel de l'Amirauté Ovtchinnikow, Professeur de Droit international à l'Académie de la Marine, Délégué naval;

M. le Baron Nolde, Fonctionnaire de Sixième classe pour Missions spéciales près le Ministre des Affaires Etrangères, Professeur de Droit international à l'Institut Polytechnique de Saint-Petersbourg, Délégué technique;

M. Linden, Chef de Section au Ministère Impérial du Commerce et de l'Industrie, Délégué technique.

Dans une série de réunions, tenues du 4 décembre 1908 au 26 février 1909, la Conférence a arrêté pour être soumis à la signature des Plénipotentiaires, la *Déclaration relative au droit de la guerre maritime*, dont le texte est annexé au présent Protocole.

En outre, le vœu suivant a été adopté par les Délégués des Puissances qui ont signé ou qui ont exprimé l'intention de signer la Convention de La Haye en date du 18 octobre 1907 pour l'établissement d'une Cour internationale des prises;

Les Délégués des Puissances représentées à la Conférence Navale et qui ont signé ou qui ont exprimé l'intention de signer la Convention de La Haye en date du 18 octobre 1907 pour l'établissement d'une Cour internationale des prises, considérant les difficultés d'ordre constitutionnel qui, pour certains

Plenipotentiary, ex-Secretary-General of the Permanent Court of Arbitration, Plenipotentiary Delegate;

First Lieutenant H. G. Suric, Naval Delegate.

RUSSIA.

Baron Taube, Doctor of Laws, Councillor to the Imperial Ministry of Foreign Affairs, Professor of International Law at the University of St. Petersburg, Plenipotentiary Delegate;

Captain Behr, Naval Attaché in London, Naval Delegate;

Colonel of the Admiralty Ovtchinnikow, Professor of International Law at the Naval Academy, Naval Delegate;

Baron Nolde, Official of the Sixth Class for Special Missions attached to the Minister for Foreign Affairs, Professor of International Law at the Polytechnic Institute of St. Petersburg, Technical Delegate.

M. Linden, Head of Department at the Imperial Ministry of Trade and Commerce, Technical Delegate.

In a series of sittings held from the 4th December, 1908, to the 26th February, 1909, the Conference has drawn up for signature by the plenipotentiaries, the *Declaration concerning the laws of naval war*, the text of which is annexed to the present protocol.

Furthermore, the following wish has been recorded by the delegates of those powers which have signed or expressed the intention of signing the Convention of The Hague of the 18th October, 1907, for the establishment of an International Prize Court:

The Delegates of the Powers represented at the Naval Conference which have signed or expressed the intention of signing the Convention of The Hague of the 18th October, 1907, for the establishment of an International Prize Court, having regard to the difficulties of a constitutional nature

États, s'opposent à la ratification, sous sa forme actuelle, de cette Convention, sont d'accord pour signaler à leurs Gouvernements respectifs l'avantage que présenterait la conclusion d'un arrangement en vertu duquel lesdits États auraient, lors du dépôt de leurs ratifications, la faculté d'y joindre une réserve portant que le droit de recourir à la Cour internationale des prises, à propos des décisions de leurs tribunaux nationaux, se présentera comme une action directe en indemnité, pourvu toutefois que l'effet de cette réserve ne soit pas de nature à porter atteinte aux droits garantis par ladite Convention, soit aux particuliers, soit à leurs Gouvernements, et que les termes de la réserve forment l'objet d'une entente ultérieure entre les Puissances Signataires de la même Convention.

En foi de quoi les Plénipotentiaires et les Délégués remplaçant les Plénipotentiaires qui ont déjà dû quitter Londres ont signé le présent Protocole.

Fait à Londres le vingt-six février mil neuf cent neuf, en un seul exemplaire, qui sera déposé dans les archives du Gouvernement Britannique et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances représentées à la Conférence Navale.

Pour l'Allemagne :

KRIEGE.

Pour les États-Unis d'Amérique :

C. H. STOCKTON.

GEORGE GRAFTON WILSON.

Pour l'Autriche-Hongrie :

C. DUMBA.

Pour l'Espagne :

RAMÓN ESTRADA.

Pour la France :

L. RENAULT.

Pour la Grande-Bretagne :

DESART.

Pour l'Italie :

GIOVANNI LOVATELLI.

which, in some States, stand in the way of the ratification of that Convention in its present form, agree to call the attention of their respective Governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the International Prize Court in respect of decisions of their National Tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said Convention either to individuals or to their Governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the Powers signatory of that Convention.

In faith whereof the plenipotentiaries and the delegates representing those plenipotentiaries who have already left London have signed the present protocol.

Done at London the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall be deposited in the archives of the British Government and of which duly certified copies shall be sent through the diplomatic channel to the powers represented at the Naval Conference.

For Germany :

KRIEGE.

For the United States of America :

C. H. STOCKTON.

GEORGE GRAFTON WILSON.

For Austria-Hungary :

C. DUMBA.

For Spain :

RAMÓN ESTRADA.

For France :

L. RENAULT.

For Great Britain :

DESART.

For Italy :

GIOVANNI LOVATELLI.

Pour le Japon :

T. SAKAMOTO.

E. YAMAZA.

Pour les Pays-Bas :

J. A. ROËLL.

L. H. RUYSSENAERS.

Pour la Russie :

F. BEHR.

For Japan :

T. SAKAMOTO.

E. YAMAZA.

For the Netherlands :

J. A. ROËLL.

L. H. RUYSSENAERS.

For Russia :

F. BEHR.

Déclaration relative au Droit de la Guerre Maritime.

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse; le Président des États-Unis d'Amérique; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, etc., et Roi Apostolique de Hongrie; Sa Majesté le Roi d'Espagne; le Président de la République Française; Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Sa Majesté la Reine des Pays-Bas; Sa Majesté l'Empereur de Toutes les Russies;

Considérant l'invitation par laquelle le Gouvernement Britannique a proposé à diverses puissances de se réunir en conférence afin de déterminer en commun ce que comportent les règles généralement reconnues du droit international au sens de l'article 7 de la convention du 18 octobre 1907, relative à l'établissement d'une cour internationale des prises;

Reconnaissant tous les avantages que, dans le cas malheureux d'une guerre maritime, la détermination desdites règles présente, soit pour le commerce pacifique, soit pour les belligérants et pour leurs relations politiques avec les Gouvernements neutres;

Considérant que les principes généraux du droit international sont souvent, dans leur application pratique, l'objet de méthodes divergentes;

Animés du désir d'assurer dorénavant une plus grande uniformité à cet égard;

Espérant qu'une œuvre d'un in-

Declaration concerning the Laws of Naval War.

His Majesty the German Emperor, King of Prussia; the President of the United States of America; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the Emperor of All the Russias;

Having regard to the terms in which the British Government invited various powers to meet in conference in order to arrive at an agreement as to what are the generally recognized rules of international law within the meaning of article 7 of the convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral governments;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law;

Animated by the desire to insure henceforward a greater measure of uniformity in this respect;

Hoping that a work so important

térêt commun aussi important rencontrera l'approbation générale ;

Ont nommé pour leurs plénipotentiaires, savoir :

[Here follow the names of the Plenipotentiaries.]

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de faire la présente Déclaration :

DISPOSITION PRÉLIMINAIRE.

Les Puissances Signataires sont d'accord pour constater que les règles contenues dans les Chapitres suivants répondent, en substance, aux principes généralement reconnus du droit international.

CHAPITRE I.—*Du blocus en temps de guerre.*

ARTICLE 1.

Le blocus doit être limité aux ports et aux côtes de l'ennemi ou occupés par lui.

ARTICLE 2.

Conformément à la Déclaration de Paris de 1856, le blocus, pour être obligatoire, doit être effectif, c'est-à-dire maintenu par une force suffisante pour interdire réellement l'accès du littoral ennemi.

ARTICLE 3.

La question de savoir si le blocus est effective est une question de fait.

ARTICLE 4.

Les blocus n'est pas considéré comme levé si, par suite du mauvais temps, les forces bloquantes se sont momentanément éloignées.

ARTICLE 5.

Le blocus doit être impartialement appliqué aux divers pavillons.

ARTICLE 6.

Le commandant de la force bloquante peut accorder à des navires de guerre la permission d'entrer dans le port bloqué et d'en sortir ultérieurement.

ARTICLE 7.

Un navire neutre, en cas de détresse constatée par une autorité

to the common welfare will meet with general approval ;

Have appointed as their plenipotentiaries, that is to say :

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration :

PRELIMINARY PROVISION.

The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognized principles of international law.

CHAPTER I.—*Blockade in time of war.*

ARTICLE 1.

A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

ARTICLE 2.

In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

ARTICLE 3.

The question whether a blockade is effective is a question of fact.

ARTICLE 4.

A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

ARTICLE 5.

A blockade must be applied impartially to the ships of all nations.

ARTICLE 6.

The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

ARTICLE 7.

In circumstances of distress, acknowledgment by an officer of the

des forces bloquantes, peut pénétrer dans la localité bloquée et en sortir ultérieurement à la condition de n'y avoir laissé ni pris aucun chargement.

ARTICLE 8.

Le blocus, pour être obligatoire, doit être déclaré conformément à l'article 9 et notifié conformément.

ARTICLE 9.

La déclaration de blocus est faite, soit par la puissance bloquante, soit par les autorités navales agissant en son nom.

Elle précise :

- (1) La date du commencement du blocus ;
- (2) Les limites géographiques du littoral bloqué ;
- (3) Le délai de sortie à accorder aux navires neutres.

ARTICLE 10.

Si la puissance bloquante ou les autorités navales agissant en son nom ne se conforment pas aux mentions, qu'en exécution de l'article 9, (1) et (2), elles ont dû inscrire dans la déclaration de blocus, cette déclaration est nulle, et une nouvelle déclaration est nécessaire pour que le blocus produise ses effets.

ARTICLE 11

La déclaration de blocus est notifiée :

- (1) Aux puissances neutres, par la puissance bloquante, au moyen d'une communication adressée aux gouvernements eux-mêmes ou à leurs représentants accrédités auprès d'elle ;
- (2) Aux autorités locales, par le commandant de la force bloquante. Ces autorités, de leur côté, en informeront, aussitôt que possible, les consuls étrangers qui exercent leurs fonctions dans le port ou sur le littoral bloqués.

blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

ARTICLE 8.

A blockade, in order to be binding, must be declared in accordance with article 9, and notified in accordance with articles 11 and 16.

ARTICLE 9.

A declaration of blockade is made either by the blockading power or by the naval authorities acting in its name.

It specifies—

- (1) The date when the blockade begins ;
- (2) The geographical limits of the coastline under blockade ;
- (3) The period within which neutral vessels may come out.

ARTICLE 10.

If the operations of the blockading power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ARTICLE 11.

A declaration of blockade is notified ;

- (1) To neutral powers, by the blockading power by means of a communication addressed to the governments direct, or to their representatives accredited to it ;
- (2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

ARTICLE 12.

Les règles relatives à la déclaration et à la notification de blocus sont applicables dans le cas où le blocus serait étendu ou viendrait à être repris après avoir été levé.

ARTICLE 13.

La levée volontaire du blocus, ainsi que toute restriction qui y serait apportée, doit être notifiée dans la forme prescrite par l'article 11.

ARTICLE 14.

La saisissabilité d'un navire neutre pour violation de blocus est subordonnée à la connaissance réelle ou présumée du blocus.

ARTICLE 15.

La connaissance du blocus est, sauf preuve contraire, présumée, lorsque le navire a quitté un port neutre postérieurement à la notification, en temps utile, du blocus à la puissance dont relève ce port.

ARTICLE 16.

Si le navire qui approche du port bloqué n'a pas connu ou ne peut être présumé avoir connu l'existence du blocus, la notification doit être faite au navire même par un officier de l'un des bâtiments de la force bloquante. Cette notification doit être portée sur le livre de bord avec indication de la date et de l'heure, ainsi que de la position géographique du navire à ce moment.

Le navire neutre qui sort du port bloqué, alors que, par la négligence du commandant de la force bloquante, aucune déclaration de blocus n'a été notifiée aux autorités locales ou qu'un délai n'a pas été indiqué dans la déclaration notifiée, doit être laissé libre de passer.

ARTICLE 17

La saisie des navires neutres pour violation de blocus ne peut être

ARTICLE 12.

The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

ARTICLE 13.

The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by article 11.

ARTICLE 14.

The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ARTICLE 15.

Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 16.

If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's log-book, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

ARTICLE 17

Neutral vessels may not be captured for breach of blockade except

effectuée que dans le rayon d'action des bâtiments de guerre chargés d'assurer l'effectivité du blocus.

ARTICLE 18.

Les forces bloquantes ne doivent pas barrer l'accès aux ports et aux côtes neutres.

ARTICLE 19.

La violation du blocus est insuffisamment caractérisée pour autoriser la saisie du navire, lorsque celui-ci est actuellement dirigé vers un port non bloqué, quelle que soit la destination ultérieure du navire ou de son chargement.

ARTICLE 20.

Le navire qui, en violation du blocus, est sorti du port bloqué ou a tenté d'y entrer, reste saisissable tant qu'il est poursuivi par un bâtiment de la force bloquante. Si la chasse en est abandonnée ou si le blocus est levé la saisie n'en peut plus être pratiquée.

ARTICLE 21.

Le navire reconnu coupable de violation de blocus est confisqué. Le chargement est également confisqué, à moins qu'il soit prouvé qu'au moment où la marchandise a été embarquée, le chargeur n'a ni connu ni pu connaître l'intention de violer le blocus.

CHAPITRE II.—*De la contrebande de guerre.*

ARTICLE 22.

Sont de plein droit considérés comme contrebande de guerre les objets et matériaux suivants, compris sous le nom de contrebande absolue, savoir :

- (1) Les armes de toute nature, y compris les armes de chasse, et les pièces détachées caractérisées.

within the area of operations of the warships detailed to render the blockade effective.

ARTICLE 18.

The blockading forces must not bar access to neutral ports or coasts.

ARTICLE 19.

Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

ARTICLE 20.

A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

ARTICLE 21.

A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

CHAPTER II.—*Contraband of war.*

ARTICLE 22.

The following articles may, without notice,² be treated as contraband of war, under the name of absolute contraband :

- (1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

² In view of the difficulty of finding an exact equivalent in English for the expression "de plein droit," it has been decided to translate it by the words "without notice," which represent the meaning attached to it by the draftsman as appears from the General Report. [Note by editor of British Blue Book.]

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| <p>(2) Les projectiles, gargousses et cartouches de toute nature, et les pièces détachées caractérisées.</p> <p>(3) Les poudres et les explosifs spécialement affectés à la guerre.</p> <p>(4) Les affûts, caissons, avant-trains, fourgons, forges de campagne, et les pièces détachées caractérisées.</p> <p>(5) Les effets d'habillement et d'équipement militaires caractérisés.</p> <p>(6) Les harnachements militaires caractérisés de toute nature.</p> <p>(7) Les animaux de selle, de trait et de bât, utilisables pour la guerre.</p> <p>(8) Le matériel de campement et les pièces détachées caractérisées.</p> <p>(9) Les plaques de blindage.</p> <p>(10) Les bâtiments et embarcations de guerre et les pièces détachées spécialement caractérisées comme ne pouvant être utilisées que sur un navire de guerre.</p> <p>(11) Les instruments et appareils exclusivement faits pour la fabrication des munitions de guerre, pour la fabrication et la réparation des armes et du matériel militaire, terrestre ou naval.</p> | <p>(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.</p> <p>(3) Powder and explosives specially prepared for use in war.</p> <p>(4) Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.</p> <p>(5) Clothing and equipment of a distinctive military character.</p> <p>(6) All kinds of harness of a distinctively military character.</p> <p>(7) Saddle, draught, and pack animals suitable for use in war.</p> <p>(8) Articles of camp equipment and their distinctive component parts.</p> <p>(9) Armor plates.</p> <p>(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.</p> <p>(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.</p> |
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ARTICLE 23.

Les objets et matériaux qui sont exclusivement employés à la guerre peuvent être ajoutés à la liste de contrebande absolue au moyen d'une déclaration notifiée.

La notification est adressée aux gouvernements des autres puissances ou à leurs représentants accrédités auprès de la puissance qui fait la déclaration. La notification faite après l'ouverture des hostilités n'est adressée qu'aux puissances neutres.

ARTICLE 24.

Sont de plein droit considérés comme contrebande de guerre les

ARTICLE 23.

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the governments of other powers, or to their representatives accredited to the power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral powers.

ARTICLE 24.

The following articles, susceptible of use in war as well as for purposes

objets et matériaux susceptibles de servir aux usages de la guerre comme à des usages pacifiques, et compris sous le nom de contrebande conditionnelle, savoir :

- (1) Les vivres.
- (2) Les fourrages et les graines propres à la nourriture des animaux.
- (3) Les vêtements et les tissus d'habillement, les chaussures, propres à des usages militaires.
- (4) L'or et l'argent monnayés et en lingots, les papiers représentatifs de la monnaie.
- (5) Les véhicules de tout nature pouvant servir à la guerre, ainsi que les pièces détachées.
- (6) Les navires, bateaux et embarcations de tout genre, les docks flottants, parties de bassins, ainsi que les pièces détachées.
- (7) Le matériel fixe ou roulant des chemins de fer, le matériel des télégraphes, radiotélégraphes, et téléphones.
- (8) Les aérostats et les appareils d'aviation, les pièces détachées caractérisées ainsi que les accessoires, objets et matériaux caractérisés comme devant servir à l'aérostation ou à l'aviation.
- (9) Les combustibles; les matières lubrifiantes.
- (10) Les poudres et les explosifs qui ne sont pas spécialement affectés à la guerre.
- (11) Les fils de fer barbelés, ainsi que les instruments servant à les fixer ou à les couper.
- (12) Les fers à cheval et le matériel de maréchalerie.
- (13) Les objets de harnachement et de sellerie.
- (14) Les jumelles, les télescopes, les chronomètres et les divers instruments nautiques.

of peace, may, without notice,³ be treated as contraband of war, under the name of conditional contraband :

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.
- (7) Railway material both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
- (9) Fuel; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

³ See note on Article 22.

ARTICLE 25.

Les objets et matériaux susceptibles de servir aux usages de la guerre comme à des usages pacifiques, et autres que ceux visés aux articles 22 et 24, peuvent être ajoutés à la liste de contrebande conditionnelle au moyen d'une déclaration qui sera notifiée de la manière prévue à l'article 23, deuxième alinéa.

ARTICLE 26.

Si une puissance renonce, en ce qui la concerne, à considérer comme contrebande de guerre des objets et matériaux qui rentrent dans une des catégories énumérées aux articles 22 et 24, elle fera connaître son intention par une déclaration notifiée de la manière prévue à l'article 23, deuxième alinéa.

ARTICLE 27.

Les objets et matériaux, qui ne sont pas susceptibles de servir aux usages de la guerre, ne peuvent pas être déclarés contrebande de guerre.

ARTICLE 28.

Ne peuvent pas être déclarés contrebande de guerre les articles suivants, savoir :

- (1) Le coton brut, les laines, soies, jutes, lins, chanvres bruts, et les autres matières premières des industries textiles, ainsi que leurs filés.
- (2) Les noix et graines oléagineuses ; le coprah.
- (3) Les caoutchoucs, résines, gommes et laques ; le houblon.
- (4) Les peaux brutes, les cornes, os et ivoires.
- (5) Les engrais naturels et artificiels, y compris les nitrates et phosphates pouvant servir à l'agriculture.
- (6) Les minéraux.
- (7) Les terres, les argiles, la chaux, la craie, les pierres y compris les marbres, les briques, ardoises et tuiles.

ARTICLE 25.

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of article 23.

ARTICLE 26.

If a power waives, as far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of article 23.

ARTICLE 27.

Articles which are not susceptible of use in war may not be declared contraband of war.

ARTICLE 28.

The following may not be declared contraband or war :

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
- (2) Oil seeds and nuts ; copra.
- (3) Rubber, resins, gums, and lacs ; hops.
- (4) Raw hides and horns, bones, and ivory.
- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.

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| (8) Les porcelaines et verreries. | (8) Chinaware and glass. |
| (9) Le papier et les matières préparées pour sa fabrication. | (9) Paper and paper-making materials. |
| (10) Les savons, couleurs, y compris les matières exclusivement destinées à les produire, et les vernis. | (10) Soap, paint and colors, including articles exclusively used in their manufacture, and varnish. |
| (11) L'hypochlorite de chaux, les cendres de soude, la soude caustique, le sulfate de soude en pains, l'ammoniaque, le sulfate d'ammoniaque et le sulfate de cuivre. | (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper. |
| (12) Les machines servant à l'agriculture, aux mines, aux industries textiles et à l'imprimerie. | (12) Agricultural, mining, textile, and printing machinery. |
| (13) Les pierres précieuses, les pierres fines, les perles, la nacre et les coraux. | (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral. |
| (14) Les horloges, pendules, et montres autres que les chronomètres. | (14) Clocks and watches, other than chronometers. |
| (15) Les articles de mode et les objets de fantaisie. | (15) Fashion and fancy goods. |
| (16) Les plumes de tout genre, les crins et soies. | (16) Feathers of all kinds, hairs, and bristles. |
| (17) Les objets d'ameublement ou d'ornement; les meubles et accessoires de bureau. | (17) Articles of household furniture and decoration; office furniture and requisites. |

ARTICLE 29.

Ne peuvent non plus être considérés comme contrebande de guerre :

- (1) Les objets et matériaux servant exclusivement à soigner les malades et les blessés. Toutefois, ils peuvent, en cas de nécessité militaire importante, être réquisitionnés, moyennant une indemnité, lorsqu'ils ont la destination prévue à l'article 30.
- (2) Les objets et matériaux destinés à l'usage du navire où ils sont trouvés, ainsi qu'à l'usage de l'équipage et des passagers de ce navire pendant la traversée.

ARTICLE 29.

Likewise the following may not be treated as contraband of war :

- (1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in article 30.
- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ARTICLE 30.

Les articles de contrebande absolue sont saisissables, s'il est établi qu'ils sont destinés au territoire de l'ennemi ou à un territoire occupé par lui ou à ses forces armées. Peu importe que le transport de ces objets se fasse directement ou exige, soit un transbordement, soit un trajet par terre.

ARTICLE 31.

La destination prévue à l'article 30 est définitivement puvée dans les cas suivants :

- (1) Lorsque la marchandise est documentée pour être débarquée dans un port de l'ennemi ou pour être livrée à ses forces armées.
- (2) Lorsque le navire ne doit aborder qu'à des ports ennemis, ou lorsqu'il doit toucher à un port de l'ennemi ou rejoindre ses forces armées, avant d'arriver au port neutre pour lequel la marchandise est documentée.

ARTICLE 32.

Les papiers de bord font preuve complète de l'itinéraire du navire transportant de la contrebande absolue, à moins que le navire soit reconstruit ayant manifestement dévié de la route qu'il devrait suivre d'après ses papiers de bord et sans pouvoir justifier d'une cause suffisante de cette déviation.

ARTICLE 33.

Les articles de contrebande conditionnelle sont saisissables, s'il est établi qu'ils sont destinés à l'usage des forces armées ou des administrations de l'état ennemi, à moins, dans ce dernier cas, que les circonstances établissent qu'en fait ces articles ne peuvent être utilisés pour la guerre en cours; cette dernière réserve ne s'applique pas aux envois visés par l'article 24 (4).

ARTICLE 34.

Il y a présomption de la destination prévue à l'article 33, si l'envoi est adressé aux autorités ennemies,

ARTICLE 30.

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

ARTICLE 31.

Proof of the destination specified in Article 30 is complete in the following cases :

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
- (2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

ARTICLE 32.

Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

ARTICLE 33.

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy state, unless in this latter case the circumstances show that the goods can not in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under article 24 (4).

ARTICLE 34.

The destination referred to in article 33 is presumed to exist if the goods are consigned to enemy

ou à un commerçant établi en pays ennemi et lorsqu'il est notoire que ce commerçant fournit à l'ennemi des objets et matériaux de cette nature. Il en est de même si l'envoi est à destination d'une place fortifiée ennemie, ou d'une autre place servant de base aux forces armées ennemies ; toutefois, cette présomption ne s'applique pas au navire de commerce lui-même faisant route vers une de ces places et dont on entend établir le caractère de contrebande.

A défaut des présomptions ci-dessus, la destination est présumée innocente.

Les présomptions établies dans le présent article admettent la preuve contraire.

ARTICLE 35.

Les articles de contrebande conditionnelle ne sont saisissables que sur le navire qui fait route vers le territoire de l'ennemi ou vers un territoire occupé par lui ou vers ses forces armées, et qui ne doit pas les décharger dans un port intermédiaire neutre.

Les papiers de bord font preuve complète de l'itinéraire du navire ainsi que du lieu de déchargement des marchandises, à moins que ce navire soit rencontré ayant manifestement dévié de la route qu'il devrait suivre d'après ses papiers de bord et sans pouvoir justifier d'une cause suffisante de cette déviation.

ARTICLE 36.

Par dérogation à l'article 35, si le territoire de l'ennemi n'a pas de frontière maritime, les articles de contrebande conditionnelle sont saisissables, lorsqu'il est établi qu'ils ont la destination prévue à l'article 33.

ARTICLE 37.

Le navire transportant des articles, qui sont saisissables comme contrebande absolue ou conditionnelle, peut être saisi, en haute mer ou dans les eaux des belligérants, pendant tout le cours de son voyage,

authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this article may be rebutted.

ARTICLE 35.

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

ARTICLE 36.

Notwithstanding the provisions of article 35, conditional contraband, if shown to have the destination referred to in article 33, is liable to capture in cases where the enemy country has no seaboard.

ARTICLE 37.

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she

même s'il a l'intention de toucher à un port d'escale avant d'atteindre la destination ennemie.

ARTICLE 38.

Une saisie ne peut être pratiquée en raison d'un transport de contrebande antérieurement effectué et actuellement achevé.

ARTICLE 39.

Les articles de contrebande sont sujets à confiscation.

ARTICLE 40.

La confiscation du navire transportant de la contrebande est permise, si cette contrebande forme, soit par sa valeur, soit par son poids, soit par son volume, soit par son fret, plus de la moitié de la cargaison.

ARTICLE 41.

Si le navire transportant de la contrebande est relâché, les frais occasionnés au capteur par la procédure devant la juridiction nationale des prises ainsi que par la conservation du navire et de sa cargaison pendant l'instruction sont à la charge du navire.

ARTICLE 42.

Les marchandises qui appartiennent au propriétaire de la contrebande et qui se trouvent à bord du même navire sont sujettes à confiscation.

ARTICLE 43.

Si un navire est reconstruit en mer naviguant dans l'ignorance des hostilités ou de la déclaration de contrebande applicable à son chargement, les articles de contrebande ne peuvent être confisqués que moyennant indemnité; le navire et le surplus de la cargaison sont exempts de la confiscation et des frais prévus par l'article 41. Il en est de même si le capitaine, après avoir eu connaissance de l'ouverture des hostilités ou de la déclaration de contrebande, n'a pu encore décharger les articles de contrebande.

is to touch at a port of call before reaching the hostile destination.

ARTICLE 38.

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

ARTICLE 39.

Contraband goods are liable to condemnation.

ARTICLE 40.

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

ARTICLE 41.

If a vessel carrying contraband is released, she is liable for the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

ARTICLE 42.

Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

ARTICLE 43.

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband can not be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

Le navire est réputé connaître l'état de guerre ou la déclaration de contrebande, lorsqu'il a quitté un port neutre, après que la notification de l'ouverture des hostilités ou de la déclaration de contrebande a été faite en temps utile à la puissance dont relève ce port. L'état de guerre est, en outre, réputé connu par le navire lorsqu'il a quitté un port ennemi après l'ouverture des hostilités.

ARTICLE 44.

Le navire arrêté pour cause de contrebande et non susceptible de confiscation à raison de la proportion de la contrebande peut être autorisé, suivant les circonstances, à continuer sa route, si le capitaine est prêt à livrer la contrebande au bâtiment belligérant.

La remise de la contrebande est mentionnée par le capteur sur le livre de bord du navire arrêté, et le capitaine de ce navire doit remettre au capteur copie certifiée conforme de tous papiers utiles.

Le capteur a la faculté de détruire la contrebande qui lui est ainsi livrée.

CHAPITRE III.—*De l'assistance hostile.*

ARTICLE 45.

Un navire neutre est confisqué et, d'une manière générale, passible du traitement que subirait un navire neutre sujet à confiscation pour contrebande de guerre :

- (1) Lorsqu'il voyage spécialement en vue du transport de passagers individuels incorporés dans la force armée de l'ennemi, ou en vue de la transmission de nouvelles dans l'intérêt de l'ennemi.
- (2) Lorsqu'à la connaissance soit du propriétaire, soit

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ARTICLE 44.

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the log-book of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

CHAPTER III.—*Unneutral Service.*

ARTICLE 45.

A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband :

- (1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.
- (2) If, to the knowledge of either the owner, the charterer,

de celui qui a affrété le navire en totalité, soit du capitaine, il transporte un détachement militaire de l'ennemi ou une ou plusieurs personnes qui, pendant le voyage, prêtent une assistance directe aux opérations de l'ennemi.

Dans les cas visés aux numéros précédents, les marchandises appartenant au propriétaire du navire sont également sujettes à confiscation.

Les dispositions du présent article ne s'appliquent pas si, lorsque le navire est rencontré en mer, il ignore les hostilités ou si le capitaine, après avoir appris l'ouverture des hostilités, n'a pu encore débarquer les personnes transportées. Le navire est réputé connaître l'état de guerre, lorsqu'il a quitté un port ennemi après l'ouverture des hostilités ou un port neutre postérieurement à la notification en temps utile de l'ouverture des hostilités à la puissance dont relève ce port.

ARTICLE 46.

Un navire neutre est confisqué et, d'une manière générale, passible du traitement qu'il subirait s'il était un navire de commerce ennemi :

- (1) Lorsqu'il prend une part directe aux hostilités.
- (2) Lorsqu'il se trouve sous les ordres ou sous le contrôle d'un agent placé à bord par le gouvernement ennemi.
- (3) Lorsqu'il est affrété en totalité par le gouvernement ennemi.
- (4) Lorsqu'il est actuellement et exclusivement affecté, soit au transport de troupes ennemies, soit à la transmission de nouvelles dans l'intérêt de l'ennemi.

Dans les cas visés par le présent article, les marchandises appartenant au propriétaire du navire sont également sujettes à confiscation.

or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the power to which such port belongs, provided that such notification was made in sufficient time.

ARTICLE 46.

A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel :

- (1) If she takes a direct part in the hostilities ;
- (2) If she is under the orders or control of an agent placed on board by the enemy government ;
- (3) If she is in the exclusive employment of the enemy government ;
- (4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present article, goods belonging to the owner of the vessel are likewise liable to condemnation.

ARTICLE 47.

Tout individu incorporé dans la force armée de l'ennemi, et qui sera trouvé à bord d'un navire de commerce neutre, pourra être fait prisonnier de guerre, quand même il n'y aurait pas lieu de saisir ce navire.

CHAPITRE IV.—*De la destruction des prises neutres.*

ARTICLE 48.

Un navire neutre saisi ne peut être détruit par le capteur, mais il doit être conduit dans tel port qu'il appartiendra pour y être statué ce que de droit sur la validité de la capture.

ARTICLE 49.

Par exception, un navire neutre, saisi par un bâtiment belligérant et qui serait sujet à confiscation, peut être détruit, si l'observation de l'article 48 peut compromettre la sécurité du bâtiment de guerre ou le succès des opérations dans lesquelles celui-ci est actuellement engagé.

ARTICLE 50.

Avant la destruction, les personnes qui se trouvent à bord devront être mises en sûreté, et tous les papiers de bord et autres pièces, que les intéressés estimeront utiles pour le jugement sur la validité de la capture, devront être transbordés sur le bâtiment de guerre.

ARTICLE 51.

Le capteur qui a détruit un navire neutre doit, préalablement à tout jugement sur la validité de la capture, justifier en fait n'avoir agi qu'en présence d'une nécessité exceptionnelle, comme elle est prévue à l'article 49. Faute par lui de ce faire, il est tenu à indemnité vis-à-vis des intéressés, sans qu'il y ait à rechercher si la capture était valable ou non.

ARTICLE 47.

Any individual embodied in the armed forces of the enemy, who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

CHAPTER IV.—*Destruction of neutral prizes.*

ARTICLE 48.

A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

ARTICLE 49.

As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

ARTICLE 50.

Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

ARTICLE 51.

A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the capture, establish that he only acted in the face of an exceptional necessity of the nature contemplated in article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

ARTICLE 52.

Si la capture d'un navire neutre, dont la destruction a été justifiée, est ensuite déclarée nulle, le capteur doit indemniser les intéressés en remplacement de la restitution à laquelle ils auraient droit.

ARTICLE 53.

Si des marchandises neutres qui n'étaient pas susceptibles de confiscation ont été détruites avec le navire, le propriétaire de ces marchandises a droit à une indemnité.

ARTICLE 54.

Le capteur a la faculté d'exiger la remise ou de procéder à la destruction des marchandises confisquées trouvées à bord d'un navire qui lui-même n'est pas sujet à confiscation, lorsque les circonstances sont telles que, d'après l'article 49, elles justifieraient la destruction d'un navire passible de confiscation. Il mentionne les objets livrés ou détruits sur le livre de bord du navire arrêté et se fait remettre par le capitaine copie certifiée conforme de tous papiers utiles. Lorsque la remise ou la destruction a été effectuée et que les formalités ont été remplies, le capitaine doit être autorisé à continuer sa route.

Les dispositions des articles 51 et 52 concernant la responsabilité du capteur qui a détruit un navire neutre sont applicables.

CHAPITRE V. — *Du transfert de pavillon.*

ARTICLE 55.

Le transfert sous pavillon neutre d'un navire ennemi, effectué avant l'ouverture des hostilités, est valable à moins qu'il soit établi que ce transfert a été effectué en vue d'éluder les conséquences qu'entraîne le caractère de navire ennemi. Il y a néanmoins présomption de nullité si l'acte de transfert ne se trouve pas à bord, alors que le navire a perdu la nationalité

ARTICLE 52.

If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

ARTICLE 53.

If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

ARTICLE 54.

The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the log-book of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

CHAPTER 5.—*Transfer to a neutral flag.*

ARTICLE 55.

The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days

belligérante moins de soixante jours avant l'ouverture des hostilités; la preuve contraire est admise.

Il y a présomption absolue de validité d'un transfert effectué plus de trente jours avant l'ouverture des hostilités, s'il est absolu, complet, conforme à la législation des pays intéressés, et s'il a cet effet que le contrôle du navire et le bénéfice de son emploi ne restent pas entre les mêmes mains qu'avant le transfert. Toutefois, si le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités et si l'acte de transfert ne se trouve pas à bord, la saisie du navire ne pourra donner lieu à des dommages et intérêts.

ARTICLE 56.

Le transfert sous pavillon neutre d'un navire ennemi, effectué après l'ouverture des hostilités, est nul, à moins qu'il soit établi que ce transfert n'a pas été effectué en vue d'éviter les conséquences qu'entraîne le caractère de navire ennemi.

Toutefois, il y a présomption absolue de nullité :

- (1) Si le transfert a été effectué pendant que le navire est en voyage ou dans un port bloqué.
- (2) S'il y a faculté de réméré ou de retour.
- (3) Si les conditions, auxquelles est soumis le droit de pavillon d'après la législation du pavillon arboré, n'ont pas été observées.

CHAPITRE VI. — *Du caractère ennemi.*

ARTICLE 57.

Sous réserve des dispositions relatives au transfert de pavillon, le caractère neutre ou ennemi du navire est déterminé par le pavillon qu'il a le droit de porter.

before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to compensation.

ARTICLE 56.

The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There is, however, an absolute presumption that a transfer is void :

- (1) If the transfer has been made during a voyage or in a blockaded port.
- (2) If a right to repurchase or recover the vessel is reserved to the vendor.
- (3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

CHAPTER VI.—*Enemy character.*

ARTICLE 57.

Subject to the provisions respecting transfer to another flag the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

Le cas où le navire neutre se livre à une navigation réservée en temps de paix reste hors de cause et n'est nullement visé par cette règle.

ARTICLE 58.

Le caractère neutre ou ennemi des marchandises trouvées à bord d'un navire ennemi est déterminé par le caractère neutre ou ennemi de leur propriétaire.

ARTICLE 59.

Si le caractère neutre de la marchandise trouvée à bord d'un navire ennemi n'est pas établi, la marchandise est présumée ennemie.

ARTICLE 60.

Le caractère ennemi de la marchandise chargée à bord d'un navire ennemi subsiste jusqu'à l'arrivée à destination, nonobstant un transfert intervenu pendant le cours de l'expédition, après l'ouverture des hostilités.

Toutefois, si, antérieurement à la capture, un précédent propriétaire neutre exerce, en cas de faillite du propriétaire ennemi actuel, un droit de revendication légale sur la marchandise, celle-ci reprend le caractère neutre.

CHAPITRE VII.—*Du convoi.*

ARTICLE 61.

Les navires neutres sous convoi de leur pavillon sont exempts de visite. Le commandant du convoi donne par écrit, à la demande du commandant d'un bâtiment de guerre belligérant, sur le caractère des navires et sur leur chargement, toutes informations que la visite servirait à obtenir.

ARTICLE 62.

Si le commandant du bâtiment de guerre belligérant a lieu de soupçonner que la religion du commandant du convoi a été surprise, il lui communique ses soupçons. C'est au commandant du convoi seul qu'il appartient en ce cas de

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

ARTICLE 58.

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

ARTICLE 59.

In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

ARTICLE 60.

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

CHAPTER VII.—*Convoy.*

ARTICLE 61.

Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

ARTICLE 62.

If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy

procéder à une vérification. Il doit constater le résultat de cette vérification par un procès-verbal dont une copie est remise à l'officier du bâtiment de guerre. Si des faits ainsi constatés justifient, dans l'opinion du commandant du convoi, la saisie d'un ou de plusieurs navires, la protection du convoi doit leur être retirée.

CHAPITRE VIII.—*De la résistance à la visite.*

ARTICLE 63.

La résistance opposée par la force à l'exercice légitime du droit d'arrêt, de visite et de saisie entraîne, dans tous les cas, la confiscation du navire. Le chargement est passible du même traitement que subirait le chargement d'un navire ennemi; les marchandises appartenant au capitaine ou au propriétaire du navire sont considérées comme marchandises ennemies.

CHAPITRE IX.—*Des dommages et intérêts.*

ARTICLE 64.

Si la saisie du navire ou des marchandises n'est pas validée par la juridiction des prises ou si, sans qu'il y ait eu de mise en jugement, la saisie n'est pas maintenue, les intéressés ont droit à des dommages et intérêts, à moins qu'il y ait eu des motifs suffisants de saisir le navire ou les marchandises.

DISPOSITIONS FINALES.

ARTICLE 65.

Les dispositions de la présente Déclaration forment un ensemble indivisible.

ARTICLE 66.

Les puissances signataires s'engagent à s'assurer, dans le cas d'une guerre où les belligérants seraient tous parties à la présente Déclaration, l'observation réciproque des règles contenues dans cette Déclaration. Elles donneront, en con-

alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

CHAPTER VIII.—*Resistance to search.*

ARTICLE 63.

Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

CHAPTER IX.—*Compensation.*

ARTICLE 64.

If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

FINAL PROVISIONS.

ARTICLE 65.

The provisions of the present Declaration must be treated as a whole, and cannot be separated.

ARTICLE 66.

The signatory powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their

séquence, à leurs autorités et à leurs forces armées les instructions nécessaires et prendront les mesures qu'il conviendra pour en garantir l'application par leurs tribunaux, spécialement par leurs tribunaux de prises.

ARTICLE 67.

La présente Déclaration sera ratifiée aussitôt que possible.

Les ratifications seront déposées à Londres.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des puissances qui y prennent part, et par le Principal Secrétaire d'Etat de Sa Majesté Britannique au Département des Affaires Étrangères.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement Britannique et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt des ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification qui les accompagnent, sera immédiatement, par les soins du Gouvernement Britannique et par la voie diplomatique, remise aux puissances signataires. Dans les cas visés par l'alinéa précédent, le dit gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

ARTICLE 68.

La présente Déclaration produira effet, pour les puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les puissances qui ratifieront ultérieurement, soixante jours après que la notification de leur ratification aura été reçue par le Gouvernement Britannique.

ARTICLE 69.

S'il arrivait qu'une des puissances signataires voulût dénoncer

authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

ARTICLE 67.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a protocol signed by the representatives of the powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the signatory powers. The said government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

ARTICLE 68.

The present Declaration shall take effect, in the case of the powers which were parties to the first deposit of ratifications, sixty days after the date of the protocol recording such deposit, and, in the case of the powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ARTICLE 69.

In the event of one of the signatory powers wishing to denounce

la présente Déclaration, elle ne pourra le faire que pour la fin d'une période de douze ans commençant à courir soixante jours après le premier dépôt de ratifications et, ensuite, pour la fin de périodes successives de six ans, dont la première commencera à l'expiration de la période de douze ans.

La dénonciation devra être, au moins un an à l'avance, notifiée par écrit au Gouvernement Britannique, qui en donnera connaissance à toutes les autres puissances.

Elle ne produira ses effets qu'à l'égard de la puissance qui l'aura notifiée.

ARTICLE 70.

Les puissances représentées à la Conférence Navale de Londres, attachant un prix particulier à la reconnaissance générale des règles adoptées par elles, expriment l'espoir que les puissances qui n'y étaient pas représentées adhéreront à la présente Déclaration. Elles prient le Gouvernement Britannique de vouloir bien les inviter à le faire.

La puissance qui désire adhérer notifie par écrit son intention au Gouvernement Britannique, en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit gouvernement.

Ce gouvernement transmettra immédiatement à toutes les autres puissances copie certifiée conforme de la notification, ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification. L'adhésion produira effet soixante jours après cette date.

La situation des puissances adhérentes sera, en tout ce qui concerne cette Déclaration, assimilée à la situation des puissances signataires.

ARTICLE 71.

La présente Déclaration, qui portera la date du 26 février 1909, pourra être signée à Londres jusqu'au 30 juin 1909, par les pléni-

the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other powers.

It will only operate in respect of the denouncing power.

ARTICLE 70.

The powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said government.

The said government shall forthwith transmit to all the other powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding powers shall be on the same footing as the signatory powers.

ARTICLE 71.

The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the

potentiaires des puissances représentées à la Conférence Navale.

En foi de quoi, les plénipotentiaires ont revêtu la présente Déclaration de leurs signatures et y ont apposé leurs cachets.

Fait à Londres, le vingt-six février mil neuf cent neuf, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement Britannique et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux puissances représentées à la Conférence Navale.

plenipotentiaries of the powers represented at the Naval Conference.

In faith whereof the plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the powers represented at the Naval Conference.

APPENDIX B

HAGUE CONVENTION RELATIVE TO THE ESTABLISHMENT OF AN INTERNATIONAL PRIZE COURT.

Animated by the desire to settle in an equitable manner the differences which sometimes arise in the course of a naval war in connection with the decisions of National Prize Courts ;

Considering that, if these Courts are to continue to exercise their functions in the manner determined by national legislation, it is desirable that in certain cases an appeal should be provided under conditions conciliating, as far as possible, the public and private interests involved in matters of prize ;

Whereas, moreover, the institution of an International Court, whose jurisdiction and procedure would be carefully defined, has seemed to be the best method of obtaining this object ;

Convinced, finally, that in this manner the hardships consequent on naval war would be mitigated ; that, in particular, good relations will be more easily maintained between belligerents and neutrals, and peace better assured ;

Desirous of concluding a Convention to this effect, have appointed the following as their Plenipotentiaries :—

(Here follow names of Plenipotentiaries)

Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions :—

PART I.—*General Provisions*

ARTICLE I

The validity of the capture of a merchant-ship or its cargo is decided before a Prize Court, in accordance with the present Convention, when neutral or enemy property is involved.

ARTICLE II

Jurisdiction in matters of prize is exercised, in the first instance, by the Prize Courts of the belligerent captor.

The judgments of these Courts are pronounced in public or are officially notified to parties concerned, whether neutrals or enemies.

ARTICLE III

The judgments of National Prize Courts may be brought before the International Prize Court—

1. When the judgment of the National Prize Courts affects the property of a neutral Power or individual ;

2. When the judgment affects enemy property and relates to—

(a) Cargo on board a neutral ship ;

(b) An enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim ;

(c) A claim based upon the allegation that the seizure has been effected in violation, either of the provisions of a Convention in force between the belligerent Powers, or of a regulation promulgated by the belligerent captor.

The appeal against the judgment of the National Court can be based on the ground that the judgment was wrong either in fact or in law.

ARTICLE IV

An appeal may be brought—

1. By a neutral Power, if the judgment of the National Tribunals injuriously affects its property or the property of its Nationals (Article III (1)), or if the capture of an enemy vessel is alleged to have taken place in the territorial waters of that Power (Article III (2) (b)) ;

2. By a neutral individual, if the judgment of the National Court injuriously affects his property (Article III (1)), subject, however, to the reservation that the Power to which he belongs may forbid him to bring the case before the Court, or may itself undertake the proceedings in his place ;

3. By an individual subject or citizen of an enemy Power, if the judgment of the National Court injuriously affects his property in the cases referred to in Article III (2), except that mentioned in paragraph (b) .

ARTICLE V

An appeal may also be brought on the same conditions as in the preceding Article by persons belonging either to a neutral or an enemy State, who derive their rights from and are entitled to represent an individual qualified to appeal, when they have taken part in the proceedings before the National Court. Persons so entitled may appeal separately to the extent of their interest.

The same rule applies in the case of persons belonging either to a neutral or an enemy State, who derive their rights from and are entitled to represent a neutral Power whose property was the subject of the decision.

ARTICLE VI

When, in accordance with the above Article III, the International Court has jurisdiction, the National Courts cannot deal with a case in more than two instances. The municipal law of the belligerent captor shall decide whether the case may be brought before the International Court after judgment has been given in first instance or only after an appeal.

If the National Courts fail to give final judgment within two years from the date of capture, the case may be carried direct to the International Court.

ARTICLE VII

If a question of law, to be decided, is covered by a Treaty in force between the belligerent captor and a Power which is itself or whose subject or citizen is a party to the proceedings, the Court is governed by the provisions of the said Treaty.

In the absence of such provisions, the Court shall apply the rules of international law. If no generally recognized rule exists, the Court shall give judgment in accordance with the general principles of justice and equity.

The above provisions apply equally to questions relating to the order and mode of proof.

If, in accordance with Article III (2) (c), the ground of appeal is the violation of a regulation promulgated by the belligerent captor, the Court will enforce the enactment.

The Court may disregard failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

ARTICLE VIII

If the Court pronounces the capture of the vessel or cargo to be valid, they shall be disposed of, in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the Court shall order restitution of the vessel or cargo, and shall fix, if there is occasion, the amount of the damages. If the vessel or cargo have been sold or destroyed, the Court shall determine the compensation to be given to the owner on this account.

If the National Court pronounced the capture to be null, the Court can only be asked to decide as to the damages.

ARTICLE IX

The Contracting Powers undertake to submit, in good faith, to the decisions of the International Prize Court, and to carry them out with the least possible delay.

PART II.—*Constitution of the International Prize Court.*

ARTICLE X

The International Prize Court is composed of Judges and Deputy-Judges, appointed by the Contracting Powers; they must all be jurists of known proficiency in questions of international maritime law, and of the highest moral reputation.

The appointment of these Judges and Deputy-Judges shall be made within six months after the ratification of the present Convention.

ARTICLE XI

The Judges and Deputy-Judges are appointed for a period of six years, reckoned from the date on which the notification of their appointment is received by the Administrative Council established by the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899. Their appointments can be renewed.

Should one of the Judges or Deputy-Judges die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case, the appointment is made for a fresh period of six years.

ARTICLE XII

The Judges of the International Prize Court are all equal in rank and have precedence according to the date on which the notification of their appointment was received (Article XI, paragraph 1), and, if they sit by rota (Article XV, paragraph 2), according to the date on which they entered upon their duties.

The Deputy-Judges when acting are assimilated to the Judges. They rank, however, after them.

ARTICLE XIII

The Judges enjoy diplomatic privileges and immunities in the performance of their duties and when outside their own country.

Before taking their seat, the Judges must swear, or make a solemn promise before the Administrative Council, to discharge their duties impartially and conscientiously.

ARTICLE XIV

The Court is composed of fifteen Judges: nine Judges constitute a *quorum*.

A Judge who is absent, or prevented from sitting, is replaced by the Deputy-Judge.

ARTICLE XV

The Judges appointed by the following Contracting Powers—Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia—are always summoned to sit.

The Judges and Deputy-Judges appointed by the other Contracting Powers sit by rota, as shown in the Table annexed to the present Convention; their duties may be performed successively by the same person. The same Judge may be appointed by several of the said Powers.

ARTICLE XVI

If a belligerent Power has, according to the rota, no Judge sitting in the Court, it may ask that the Judge appointed by it should take part in the settlement of all cases arising from the war. Lots shall then be drawn as to which of the Judges entitled to sit, according to the rota, shall withdraw. This arrangement does not affect the Judge appointed by the other belligerent.

ARTICLE XVII

No Judge can sit who has been a party, in any way whatever, to the sentence pronounced by the National Courts, or has taken part in the case as counsel or advocate for one of the parties.

No Judge or Deputy-Judge can, during his tenure of office, appear as agent or advocate before the International Prize Court, nor act for one of the parties in any capacity whatever.

ARTICLE XVIII

The belligerent captor is entitled to appoint a naval officer of high rank to sit as assessor, but with no voice in the decision. A neutral Power, which is a party to the proceedings or whose subject or citizen is a party, has the same right of appointment; if, as the result of this last provision, more than one Power is concerned, they must agree among themselves, if necessary by lot, on the officer to be appointed.

ARTICLE XIX

The Court elects its President and Vice-President by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority, and, in case the votes are equal, by lot.

ARTICLE XX

The Judges on the International Prize Court are entitled to travelling allowances, in accordance with the regulations in force in their own country; and in addition receive, while the Court is sitting or while they are carrying out duties conferred upon them by the Court, a sum of 200 Dutch florins per diem.

These payments are included in the general expenses of the Court, dealt with in Article XLVII., and are paid through the International Bureau established by the Convention of the 29th July, 1899.

The Judges may not receive from their own Government or from that of any other Power, any remuneration in their capacity as members of the Court.

ARTICLE XXI

The seat of the International Prize Court is at The Hague, and it cannot, except in the case of *force majeure*, be transferred elsewhere without the consent of the belligerents.

ARTICLE XXII

The administrative Council fulfils, with regard to the International Prize Court, the same functions as to the Permanent Court of Arbitration, but only Representatives of Contracting Powers will be members of it.

ARTICLE XXIII

The International Bureau acts as registry to the International Prize Court, and must place its offices and staff at the disposal of the Court. It has charge of the archives and carries out the administrative work.

The Secretary-General of the International Bureau acts as Registrar.

The necessary secretaries to assist the Registrar; translators and shorthand writers are appointed and sworn in by the Court.

ARTICLE XXIV

The Court determines which language it will itself use and what languages may be used before it; but the official language of the National Courts, which have had cognizance of the case, may always be used before the Court.

ARTICLE XXV

Powers which are concerned in a case may appoint special agents to act as intermediaries between themselves and the Court. They may also engage counsel or advocates to defend their rights and interests.

ARTICLE XXVI

A private person concerned in a case will be represented before the Court by an attorney, who must be either an advocate qualified to plead before a Court of Appeal or a High Court of one of the contracting States, or a lawyer practising before a similar Court, or, lastly, a professor of law at one of the higher academical schools of those countries.

ARTICLE XXVII

For all notices to be served, in particular, on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on whose territory the service is to be carried out. The same rule applies in the case of steps being taken to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to, under its municipal law, allow. They cannot be rejected unless the Power in question considers them calculated to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power on whose territory it sits.

Notices to be given to parties, in the place where the Court sits, may be served through the International Bureau.

PART III.—*Procedure in the International Prize Court*

ARTICLE XXVIII

An appeal to the International Prize Court is entered by means of a written declaration made in the National Court, which has already dealt with the case, or addressed to the International Bureau; in the latter case the appeal can be entered by telegram.

The period within which the appeal must be entered is fixed at 120 days, counting from the day the decision is delivered or notified (Article II, paragraph 2).

ARTICLE XXIX

If the notice of appeal is entered in the National Court, this Court, without considering the question whether the appeal was entered in due time, will transmit within seven days the record of the case to the International Bureau.

If the notice of appeal is sent to the International Bureau, the Bureau will immediately inform the National Court, if possible, by telegram. The latter will transmit the record as provided in the preceding paragraph.

When the appeal is brought by a neutral individual the International Bureau at once informs by telegram the individual's Government, in order to enable it to enforce the rights it enjoys under Article IV, paragraph 2.

ARTICLE XXX

In the case provided for in Article VI, paragraph 2, the notice of appeal can be addressed to the International Bureau only. It must be entered within thirty days of the expiration of the period of two years.

ARTICLE XXXI

If the appellant does not enter his appeal within the period laid down in Articles XXVIII or XXX, it shall be rejected without discussion.

Provided that he can show that he was prevented from so doing by *force majeure*, and that the appeal was entered within sixty days after the circumstances which prevented him entering it before had ceased to operate, the Court can, after hearing the respondent, grant relief from the effect of the above provision.

ARTICLE XXXII

If the appeal is entered in time, a certified copy of the notice of appeal is forthwith officially transmitted by the Court to the respondent.

ARTICLE XXXIII

If, in addition to the parties who are before the Court, there are other parties concerned who are entitled to appeal, or if, in the case referred to in Article XXIX, paragraph 3, the Government who has received notice of an appeal has not announced its decision, the Court will await, before dealing with the case, the expiration of the period laid down in Articles XXVIII or XXX.

ARTICLE XXXIV

The procedure before the International Court includes two distinct parts: the preliminary proceedings in writing and oral discussion in Court.

The preliminary proceedings consist of the deposit and exchange of cases, counter-cases, and, if necessary, of replies, of which the order is fixed by the Court, as also the periods within which they must be delivered. The parties annex thereto all papers and documents of which they intend to make use.

A certified copy of every document produced by one party must be communicated to the other party through the medium of the Court.

ARTICLE XXXV

After the close of the preliminary proceedings in writing, a public sitting is held on a day fixed by the Court.

At this sitting the parties state their view of the case, both as to the law and as to the facts.

The Court may, at any stage of the proceedings, either at the request of one of the parties, or on their own initiative, suspend speeches of counsel in order that supplementary evidence may be obtained.

ARTICLE XXXVI

The International Court may order the supplementary evidence to be taken either in the manner provided by Article XXVII, or before itself, or one or more of the members of the Court, provided that this can be done without resort to compulsion or the use of threats.

If steps are to be taken for the purpose of obtaining evidence by members of the Court outside the territory where it is sitting, the consent of the Foreign Government must be obtained.

ARTICLE XXXVII

The parties are summoned to take part in all stages of the proceedings and receive certified copies of the *procès-verbaux*.¹

ARTICLE XXXVIII

The discussions are under the control of the President or Vice-President, or, in case they are absent or cannot act, of the senior Judge present.

The Judge appointed by a belligerent party cannot preside.

ARTICLE XXXIX

The discussions take place in public, subject to the right of a Government, who is a party to the case, to demand that they be held in private.

Procès-verbaux are taken of these discussions and signed by the President and Registrar, and these *procès-verbaux* alone have an authentic character.

¹ Containing the depositions and other records of the proceedings.

ARTICLE XL

If a party does not appear, despite the fact that he has been duly cited, or if a party fails to comply with some step within the period fixed by the Court, the case proceeds without that party, and the Court gives judgment in accordance with the material at its disposal.

ARTICLE XLI

The Court officially notifies to the parties all decisions or orders made in their absence.

ARTICLE XLII

The Court takes into consideration in arriving at its decision all the acts, evidence, oral statements.

ARTICLE XLIII

The Court considers its decision in private and the proceedings are secret.

All questions are decided by a majority of the Judges present. If the number of Judges is even and equally divided, the vote of the junior Judge, in the order of precedence laid down in Article XII, paragraph 1, is not counted.

ARTICLE XLIV

The judgment of the Court must give the reasons on which it is based. It contains the names of the Judges taking part in it, and also of the Assessors, if any; it is signed by the President and Registrar.

ARTICLE XLV

The sentence is pronounced in public sitting, the parties concerned being present or duly summoned to attend; the sentence is officially communicated to the parties.

When this communication has been made, the Court transmits to the National Prize Court the record of the case, together with copies of the various decisions arrived at, and of the *procès-verbaux* of the preliminary proceedings.

ARTICLE XLVI

Each party pays its own costs.

The party against whom the Court decides bears, in addition, the costs of the trial, and also pays 1 per cent. of the value of the subject-matter of the case as a contribution to the general expenses of the International Court. The amount of these payments is fixed in the judgment of the Court.

If the appeal is brought by an individual, he will furnish the International Bureau with security to an amount fixed by the Court, for the purpose of guaranteeing eventual fulfilment of the two obligations mentioned in the preceding paragraph. The Court is entitled to postpone the opening of the proceedings until the security has been furnished.

ARTICLE XLVII

The general expenses of the International Prize Court are borne by the contracting Powers, in proportion to their share in the composition of the Court, as laid down in Article XV and in the annexed Table. The appointment of Deputy-Judges does not involve any contribution.

The administrative Council applies to the Powers for the funds requisite for the working of the Court.

ARTICLE XLVIII

When the Court is not sitting the duties conferred upon it by Article XXXII, Article XXXIV, paragraphs 2 and 3, Article XXXV, paragraph 1, and Article XLVI, paragraph 3, are discharged by a delegation of three Judges appointed by the Court. This delegation decides by a majority of votes.

ARTICLE XLIX

The Court itself draws up its own rules of procedure, which must be communicated to the contracting Powers.

It will meet to elaborate these rules within a year of the ratification of the present Convention.

ARTICLE L

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated, through the medium of the Dutch Government, to the contracting Powers, who will consider together as to the measures to be taken.

PART IV.—*Final Provisions*

ARTICLE LI

The present Convention only applies by itself, as of right, when the belligerent Powers are all parties to the Convention.

It is further fully understood that an appeal to the International Prize Court can only be brought by a contracting Power, or the subject or citizen of a contracting Power.

In the cases mentioned in Article V, the appeal is only admitted when both the owner and the person entitled to represent him are equally contracting Powers, or the subjects or citizens of contracting Powers.

ARTICLE LII

The present Convention shall be ratified and the ratifications shall be deposited at The Hague as soon as all the powers mentioned in Article XV and in the Table annexed are in a position to do so.

The deposit of the ratifications shall take place, in any case, on the 30th June, 1909, if the Powers which are ready to ratify furnish nine Judges and nine Deputy Judges to the Court, qualified to validly constitute a Court. If not, the deposit shall be postponed until this condition is fulfilled.

A *procès-verbal* of the deposit of ratifications shall be drawn up, of which a certified copy shall be forwarded, through the diplomatic channel, to each of the Powers referred to in the first paragraph.

ARTICLE LIII

The Powers referred to in Article XV and in the Table annexed are entitled to sign the present Convention up to the deposit of the ratifications contemplated in paragraph 2 of the preceding Article.

After this deposit, they can at any time adhere to it, purely and simply. A Power wishing to adhere, notifies its intention in writing to the Dutch Government, transmitting to it, at the same time, the act of adhesion, which shall be deposited in the archives of the said Government. The latter shall send, through the diplomatic channel, a certified copy of the notification and of the act of adhesion to all the Powers referred to in the preceding paragraph, informing them of the date on which it has received the notification.

ARTICLE LIV

The present Convention shall come into force six months from the deposit of the ratifications contemplated in Article LII, paragraphs 1 and 2.

The adhesions shall take effect sixty days after notification of such adhesion has been received by the Dutch Government, or as soon as possible on the expiration of the period contemplated in the preceding paragraph.

The International Court shall, however, have jurisdiction to deal with Prize cases decided by the National Courts at any time after the deposit of the ratifications or of the receipt of the notification of the adhesions. In such cases, the period fixed in Article XXVIII, paragraph 2, shall only be reckoned from the date when the Convention comes into force as regards a Power which has ratified or adhered.

ARTICLE LV

The present Convention shall remain in force for twelve years from the time it comes into force, as determined by Article LIV, paragraph 1, even in the case of Powers which adhere subsequently.

It shall be renewed tacitly from six years to six years unless denounced.

Denunciation must be notified in writing, at least one year before the expiration of each of the periods mentioned in the two preceding paragraphs, to the Dutch Government, which will inform all the other contracting Powers.

Denunciation shall only take effect in regard to the Power which has notified it. The Convention shall remain in force in the case of the other contracting Powers, provided that their participation in the appointment of Judges is sufficient to allow of the composition of the Court with nine Judges and nine Deputy-Judges.

ARTICLE LVI

In case the present Convention is not in operation as regards all the Powers referred to in Article XV and the annexed Table, the Administrative Council shall draw up a list on the lines of that Article and Table of the Judges and Deputy-Judges through whom the contracting Powers will participate in the composition of the Court. The times allotted by the said Table of Judges who are summoned to sit in *rota* will be redistributed between the different years of the six-year period in such a way that, as far as possible, the number of the Judges of the Court in each year shall be the same. If the number of Deputy-Judges is greater than that of the Judges, the number of the latter can be completed by Deputy-Judges chosen by lot among those Powers which do not nominate a Judge.

The list drawn up in this way by the Administrative Council shall be notified to the contracting Powers. It shall be revised when the number of these Powers is modified as the result of adhesions or denunciations.

The change resulting from an adhesion is not made until the 1st January after the date on which the adhesion takes effect, unless the adhering Power is a belligerent Power, in which case it can ask to be at once represented in the Court, the provision of Article XVI being, moreover, applicable if necessary.

When the total number of Judges is less than eleven, seven Judges form a quorum.

ARTICLE LVII

Two years before the expiration of each period referred to in paragraphs 1 and 2 of Article LV any contracting Power can demand a modification

of the provisions of Article XV and of the annexed Table, relative to its participation in the composition of the Court. The demand shall be addressed to the Administrative Council, which will examine it and submit to all the Powers proposals as to the measures to be adopted. The Powers shall inform the Administrative Council of their decision with the least possible delay. The result shall be at once, and at least one year and thirty days before the expiration of the said period of two years, communicated to the Power which made the demand.

When necessary, the modifications adopted by the Powers shall come into force from the commencement of the fresh period.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Dutch Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers designated in Article XV and in the Table annexed.

(Signatures).

SIGNATURES.

Distribution of Judges and Deputy Judges by Countries for each Year of the Period of Six Years.

	Judges.	Deputy Judges.	Judges.	Deputy Judges.
	<i>First Year.</i>		<i>Second Year.</i>	
1	Argentina . . .	Paraguay	Argentina . . .	Panama
2	Colombia . . .	Bolivia	Spain	Spain
3	Spain	Spain	Greece	Roumania
4	Greece	Roumania	Norway	Sweden
5	Norway	Sweden	Netherlands . .	Belgium
6	Netherlands . .	Belgium	Turkey	Luxemburg
7	Turkey	Persia	Uruguay	Costa Rica
	<i>Third Year.</i>		<i>Fourth Year.</i>	
1	Brazil	Santo Domingo	Brazil	Guatemala
2	China	Turkey	China	Turkey
3	Spain	Portugal	Spain	Portugal
4	Netherlands . .	Switzerland	Peru	Honduras
5	Roumania . . .	Greece	Roumania . . .	Greece
6	Sweden	Denmark	Sweden	Denmark
7	Venezuela . . .	Hayti	Switzerland . .	Netherlands
	<i>Fifth Year.</i>		<i>Sixth Year.</i>	
1	Belgium	Netherlands	Belgium	Netherlands
2	Bulgaria	Montenegro	Chile	Salvador
3	Chile	Nicaragua	Denmark	Norway
4	Denmark	Norway	Mexico	Ecuador
5	Mexico	Cuba	Portugal	Spain
6	Persia	China	Servia	Bulgaria
7	Portugal	Spain	Siam	China

APPENDIX C.

THE DECLARATION OF PARIS, 1856.

THE Plenipotentiaries who signed the Treaty of Paris of the thirtieth of March, one thousand eight hundred and fifty-six, re-assembled in Conference,

Considering :

That maritime law, in time of war, has long been the subject of deplorable disputes ;

That the uncertainty of the law and of the duties [of States] in this same matter gives occasion to differences of opinion, between neutrals and belligerents, which may cause serious difficulties and even conflicts ;

That it is consequently advantageous to establish uniformity of doctrine on a point of so much importance ;

That the Plenipotentiaries assembled at the Congress of Paris could not better respond to the intentions, by which their Governments are animated than by trying to introduce into international relations fixed principles in this respect ;

The above-mentioned Plenipotentiaries, being duly authorised, have agreed to concert measures for the attainment of this end, and having arrived at an understanding, have resolved on the following solemn Declaration :—

1. Privateering is and remains abolished ;

2. The neutral flag covers enemy's goods, with the exception of contraband of war ;

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag ;

4. Blockades, in order to be legally binding, must be effective ; that is to say, maintained by a force sufficient really to prohibit access to the enemy's coast.

The Governments of the undersigned Plenipotentiaries engage to bring this Declaration to the knowledge of the States which have not been called on to take part in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they have now proclaimed cannot but be received with gratitude by the entire world, the undersigned Plenipotentiaries do not doubt that the efforts of their Governments to obtain the general adoption thereof will be crowned with complete success.

The present Declaration is not and shall not be obligatory, except between those Powers who have acceded, or shall accede, to it.

Done at Paris, the sixteenth of April, one thousand eight hundred and fifty-six.

(Here follow the signatures.)

The Powers represented at the Congress were : Great Britain, France, Austria, Prussia, Sardinia, Turkey.

The following powers have acceded to the Declaration :—

Argentine Confederation, October 1, 1856.	Mecklenburg - Schwerin, July 22, 1856.
Baden, July 30, 1856.	Mecklenburg - Strelitz, August 25, 1856.
Bavaria, July 4, 1856.	Nassau, June 18, 1856.
Belgium, June 6, 1856.	Netherlands, June 7, 1856.
Brazil, March 18, 1858.	Oldenburg, June 9, 1856.
Bremen, June 11, 1856.	Parma, August 20, 1856.
Brunswick, December 7, 1857.	Peru, November 23, 1857.
Chile, August 13, 1856.	Pontifical States, June 3, 1856.
Denmark, June 25, 1856.	Portugal, July 28, 1856.
Ecuador, December 6, 1856.	Saxe-Altenburg, June 9, 1856.
Germanic Confederation, July 10, 1856.	Saxe-Coburg-Gotha, June 22, 1856.
Greece, June $\frac{9}{20}$, 1856.	Saxe-Weimar, June 22, 1856.
Guatemala, August 30, 1856.	Saxony, June 16, 1856.
Havana, May 31, 1856.	Sicilies, May 31, 1856.
Hayti, September 17, 1856.	Spain, January 18, 1908.
Hesse-Cassel, June 4, 1856.	Sweden and Norway, June 13, 1856.
Hesse-Darmstadt, June 15, 1856.	Switzerland, July 28, 1856.
Japan, December 24, 1886.	Tuscany, June 5, 1856.
Lubeck, June 20, 1856.	Wurtemberg, June 24, 1856.

The following Protocol to the Treaty was at the same time (April 16, 1856) recorded :—

“ At the proposal of Count Walewski and recognising that it is to the common interest to maintain the indivisibility of the four principles of the Declaration signed this day, the Plenipotentiaries agree that the Powers who have signed or shall accede to it shall not in future enter into any arrangement about the application of maritime law in time of war which does not at the same time rest on the four principles of the said Declaration.”

APPENDIX D.

NAVAL PRIZE BILL.

PARTS I-III.

A BILL TO CONSOLIDATE, WITH AMENDMENTS, THE ENACTMENTS RELATING TO NAVAL PRIZE OF WAR.

A. D. 1910.

WHEREAS at the Second Peace Conference held at The Hague in the year nineteen hundred and seven a Convention, the English translation whereof is set forth in the First Schedule to this Act, was drawn up, but it is desirable that the same should not be ratified by His Majesty until such amendments have been made in the law relating to naval prize of war as will enable effect to be given to the Convention :

And whereas for the purpose aforesaid it is expedient to consolidate the law relating to naval prize of war with such amendments as aforesaid and with certain other minor amendments :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

COURTS AND OFFICERS.

The Prize Court in England.

1.—(1) The High Court shall, without special warrant, be a prize court, and shall, on the high seas, and throughout His Majesty's Dominions, and in every place where His Majesty has jurisdiction, have all such jurisdiction as the High Court of Admiralty possessed when acting as a prize court, and generally have jurisdiction to determine all questions as to the validity of the capture of a ship or goods, the legality of the destruction of a captured ship or goods, and as to the payment of compensation in respect of such a capture or destruction.

The High Court. [54 & 55 Vict. c. 53, s. 4.]

(2) Subject to rules of court, all causes and matters within the jurisdiction of the High Court as a prize court shall be assigned to the Probate, Divorce, and Admiralty Division of the Court.

2. The High Court as a prize court shall have power to enforce any order or decree of a prize court in a British possession, and any order of the Supreme Prize Court constituted under this Act in a prize appeal.

Power of High Court to enforce decrees of other courts. [27 & 28 Vict. c. 25, s. 4.]

Prize Courts in British Possessions.

3. His Majesty may, by commission addressed to the Admiralty, empower the Admiralty to authorise, and the Admiralty may thereupon by warrant authorise, either a Vice-Admiralty court or a Colonial Court of

Prize courts in British

A.D. 1910.

possessions.
[57 & 58
Vict. c. 39,
s. 2 (1)
and (3).
53 & 54 Vict.
c. 27, s. 2 (3)
and s. 9]
53 & 54 Vict.
c. 27.]

Commis-
sions.
[57 & 58
Vict. c. 39,
s. 2 (1), (2).]

Admiralty, within the meaning of the Colonial Courts of Admiralty Act, 1890, to act as a prize court in a British possession, or may in like manner establish a Vice-Admiralty court for the purpose of so acting; and any court so authorised shall, subject to the terms of the warrant from the Admiralty, have all such jurisdiction as is by this Act conferred on the High Court as a prize court.

4.—(1) Any commission, warrant, or instructions from His Majesty the King or the Admiralty for the purpose of commissioning a prize court at any place in a British possession may, notwithstanding the existence of peace, be issued at any time, with a direction that the court shall act only upon such proclamation as herein-after mentioned being made in the possession.

(2) Where any such commission, warrant, or instructions have been issued, then, subject to instructions from His Majesty the Vice-Admiral of State or otherwise that war has broken out between His Majesty and any foreign State, proclaim that war has so broken out, and thereupon the said commission, warrant, and instructions shall take effect as if the same had been issued after the breaking out of such war and such foreign State were named therein.

(3) Any such commission, warrant, or instructions may be revoked or altered from time to time.

Enforcement
of orders.

5. Every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the High Court and of any other prize court in prize causes, and all orders of the Supreme Prize Court constituted under this Act in prize appeals.

Remunera-
tion of
certain
judges of
prize courts
in a British
possession.
[27 & 28
Vict. c. 25;
ss. 10, 11.]
53 & 54
Vict. c. 27.

6.—(1) His Majesty in Council may, with the concurrence of the Treasury, grant to the judge of any prize court in a British possession, other than a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, remuneration, at a rate not exceeding five hundred pounds a year, payable out of money provided by Parliament, subject to such regulations as seem meet.

(2) A judge to whom remuneration is so granted shall not be entitled to any further emolument, arising from fees or otherwise, in respect of prize business transacted in his court.

(3) An account of all such fees shall be kept by the registrar of the court, and the amount thereof shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Returns
from prize
courts in
British
possessions.
[27 & 28
Vict. c. 25,
s. 12.]

7. The registrar of every prize court in a British possession shall, on the first day of January and the first day of July in every year, make out a return (in such form as the Admiralty from time to time direct) of all cases adjudged in the court since the last half-yearly return, and shall with all convenient speed send the same to the Admiralty registrar of the Probate, Divorce, and Admiralty Division of the High Court, who shall keep the same in the Admiralty registry of that Division, and who shall, as soon as conveniently may be, send a copy of the returns of each half year to the Admiralty, and the Admiralty shall lay the same before both Houses of Parliament.

Fees.
[57 & 58
Vict. c. 39,
s. 3 (4).]
53 & 54 Vict.
c. 27.

8. If any Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, is authorised under this Act or otherwise to act as a prize court, all fees arising in respect of prize business transacted in the court shall be fixed, collected, and applied in like manner as the fees arising in respect of the Admiralty business of the court under the first-mentioned Act.

Appeals.

Appeals to
Supreme

9.—(1) Any appeal from the High Court when acting as a prize court, or from a prize court in a British possession, shall lie only to a court (to

be called the Supreme Prize Court) consisting of such members for the time being of the Judicial Committee of the Privy Council as may be nominated by His Majesty for that purpose. A.D. 1910.
Prize Court.
[54 & 55
Vict. c. 53,
s. 4 (3).]

(2) The Supreme Prize Court shall be a court of record with power to take evidence on oath, and the seal of the court shall be such as the Lord Chancellor may from time to time direct.

(3) Every appeal to the Supreme Prize Court shall be heard before not less than three members of the court sitting together.

(4) The registrar and other officers for the time being of the Judicial Committee of the Privy Council shall be registrar and officers of the Supreme Prize Court.

10.—(1) An appeal shall lie to the Supreme Prize Court from any order or decree of a prize court, as of right in case of a final decree, and in other cases with the leave of the court making the order or decree or of the Supreme Prize Court. Procedure on, and conditions of, appeals.
[27 & 28
Vict. c. 25,
s. 5.]

(2) Every appeal shall be made in such manner and form and subject to such conditions and regulations (including regulations as to fees, costs, charges, and expenses) as may for the time being be directed by Order in Council.

11. The Supreme Prize Court shall have jurisdiction to hear and determine any such appeal, and may therein exercise all such powers as are under this Act vested in the High Court, and all such powers as were wont to be exercised by the Commissioners of Appeal or by the Judicial Committee of the Privy Council in prize causes. Jurisdiction of the Supreme Prize Court in prize appeals.
[27 & 28
Vict. c. 25,
s. 6;
54 & 55 Vict.
c. 53, s. 4 (3).]

Rules of Court.

12.—His Majesty in Council may make rules of court for regulating, subject to the provisions of this Act, the procedure and practice of the Supreme Prize Court and of the prize courts within the meaning of this Act, and the duties and conduct of the officers thereof, and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts, and the costs, charges, and expenses to be allowed to the practitioners therein. Rules of court.
[57 & 58
Vict. c. 39,
s. 3.]

Officers of Prize Courts.

13. It shall not be lawful for any registrar, marshal, or other officer of the Supreme Prize Court or of any other prize court, directly or indirectly to act or be in any manner concerned as advocate, proctor, solicitor, or agent, or otherwise, in any prize appeal or cause. Prohibition of officer of prize court acting as advocate, &c.
[27 & 28
Vict. c. 25,
ss. 14, 15.]

14. The Public Authorities Protection Act, 1893, shall apply to any action, prosecution, or other proceeding against any person for any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act whether commenced in the United Kingdom or elsewhere within His Majesty's dominions. Protection of persons acting in execution of Act.
[27 & 28
Vict. c. 25,
s. 51.]

Continuance of Proceedings.

15. A court duly authorised to act as a prize court during any war shall after the conclusion of the war continue so to act in relation to, and finally dispose of; all matters and things which arose during the war, including all penalties, liabilities, and forfeitures incurred during the war. Continuance of proceedings after conclusion of war.
[57 & 58
Vict. c. 39,
s. 2 (5).]

PART II.

PROCEDURE IN PRIZE CAUSES.

16. Where a ship (not being a ship of war) is taken as prize, and brought into port within the jurisdiction of a prize court, she shall Custody of ships taken

A.D. 1910.

as prize.
[27 & 28

Vict. c. 25,
s. 16.]

Bringing in
of ship

papers.
[27 & 28

Vict. c. 25,
s. 17.]

Examination
of persons

from captured
ship.

[27 & 28

Vict. c. 25,
s. 19.]

Delivery of
ship on bail.

[27 & 28

Vict. c. 25,
s. 25.]

Power to
order sale.

[27 & 28

Vict. c. 25,
ss. 26 & 27.]

Power to
award com-

pen- sation
notwith-

standing
release of

ship.

Application
and effect of

Part II.

[27 & 28

Vict. c. 25,
s. 31.]

Appoint-
ment of

British

judge and
deputy judge

of Inter-

national
Court.

[See 39 & 40

Vict. c. 59,
s. 6.]

Payment of
contribution

towards

expenses of
International
Prize Court.

Appeals to
International
Prize Court.

forthwith be delivered up to the marshal of the court, or, if there is no such marshal, to the principal officer of customs at the port, and shall remain in his custody, subject to the orders of the court.

17.—(1) The captors shall in all cases, with all practicable speed, bring the ship papers into the registry of the court.

(2) The officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture and saw the ship papers delivered up or found on board, shall make oath that they are brought in as they were taken, without fraud, addition, subduction, or alteration, or else shall account on oath to the satisfaction of the court for the absence or altered condition of the ship papers or any of them.

(3) Where no ship papers are delivered up or found on board the captured ship, the officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture, shall make oath to that effect.

18. The captors shall also, unless the court otherwise directs, with all practicable speed after the captured ship is brought into port, bring a convenient number of the principal persons belonging to the captured ship before the judge of the court or some person authorised in this behalf, by whom they shall be examined on oath.

19. The court may, if it thinks fit, at any time after a captured ship has been appraised direct that the ship be delivered up to the claimant on his giving security to the satisfaction of the court to pay to the captors the appraised value thereof in case of condemnation.

20. The court may at any time, if it thinks fit, on account of the condition of the captured ship, or on the application of a claimant, or on or after condemnation, order that the captured ship be appraised (if not already appraised), and be sold.

21. Where a ship has been taken as prize, a prize court may award compensation in respect of the capture notwithstanding that the ship has been released, whether before or after the institution of any proceedings in the court in relation to the ship.

22.—(1) The provisions of this Part of this Act relating to ships shall extend and apply, with the necessary adaptations, to goods taken as prize.

(2) The provisions of this Part of this Act shall have effect subject to any rules of court dealing with the subject matter thereof.

PART III.

INTERNATIONAL PRIZE COURT.

23.—(1) In the event of an International Prize Court being constituted in accordance with the said Convention or with any Convention amending the same (hereinafter referred to as the International Prize Court), it shall be lawful for His Majesty from time to time to appoint a judge and deputy judge of the court.

(2) A person shall not be qualified to be appointed by His Majesty a judge or deputy judge of the court unless he has been, at or before the time of his appointment, the holder, for a period of not less than two years, of some one or more of the offices described as high judicial offices by the Appellate Jurisdiction Act, 1876, as amended by any subsequent enactment.

24. Any sums required for the payment of any contribution towards the general expenses of the International Prize Court payable by His Majesty under the said Convention shall be charged on and paid out of the Consolidated Fund and the growing proceeds thereof.

25. In cases to which this Part of this Act applies an appeal from the Supreme Prize Court shall lie to the International Prize Court.

26. If in any case to which this Part of this Act applies final judgment is not given by the prize court, or on appeal by the Supreme Prize Court, within two years from the date of the capture, the case may be transferred to the International Prize Court.

27. His Majesty in Council may make rules regulating the manner in which appeals and transfers under this Part of this Act may be made and with respect to all such matters (including fees, costs, charges, and expenses) as appear to His Majesty to be necessary for the purpose of such appeals and transfers, or to be incidental thereto or consequential thereon.

28. The High Court and every prize court in a British Possession shall enforce within its jurisdiction all orders and decrees of the International Prize Court in appeals and cases transferred to the court under this Part of this Act.

29. This Part of this Act shall apply only to such cases and during such period as may for the time being be directed by Order in Council, and His Majesty may by the same or any other Order in Council apply this Part of this Act subject to such conditions, exceptions and qualifications as may be deemed expedient.

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